

Such assessed value shall be taken and considered as the taxable value of such property upon which the levy shall be made.

In arriving at said actual value the assessor shall take into consideration its productive and earning capacity, if any, past, present, and prospective; its market value, if any, and all other matters that affect the actual value of the property; and the burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate or inequitable.

Approved April 19, 1924.

## CHAPTER 126

### DRAINAGE

#### H. F. 185

AN ACT to amend, revise, and codify chapters one (1), two (2) and two-a (2-a) of title fifteen (15) of the compiled code of Iowa and of the supplement to said code, relating to levees, ditches, drains, and watercourses, and chapter two (2) of title eleven (11) of the compiled code of Iowa, relating to drainage of highways and highway drainage districts.

Be It Enacted by the General Assembly of the State of Iowa:

That chapters one (1), two (2), and two-a (2-a) of title fifteen of the compiled Code of Iowa and of the supplement to said Code, and chapter two (2) of title eleven (11) of the compiled Code of Iowa, are amended, revised, and codified to read as follows:

## CHAPTER 1

### LEVEE AND DRAINAGE DISTRICTS AND IMPROVEMENTS ON PETITION OR BY MUTUAL AGREEMENT.

Section 1. Board of supervisors to establish drainage district. The board of supervisors of any county shall have jurisdiction, power and authority at any regular, special or adjourned session, to establish a drainage district or districts, and to locate and establish levees, and cause to be constructed as hereinafter provided any levee, ditch, drain or watercourse, or to straighten, widen, deepen or change any natural watercourse, in such county, whenever the same will be of public utility or conducive to the public health, convenience or welfare.

Sec. 2. Presumption as to drainage or protection by levees of agricultural lands. The drainage of surface waters from agricultural lands or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare.

Sec. 3. Levee defined - bank protection. For the purpose of this chapter and with reference to improvements along or adjacent to the Missouri river the word "levee" shall be construed to include, in addition to its ordinary and accepted meaning, embankments, revetments, retards, or any other approved system of construction which may be deemed necessary to adequately protect the banks of any river or stream, within or adjacent to any county, from wash, cutting or erosion.

Sec. 4. General rule for location. The levees, ditches or drains herein provided for shall, so far as practicable, be surveyed and located along the general course of the natural streams and watercourses or in the general course of natural drainage of the lands of said district, but where it will be more economical or practicable such ditch or drain need not follow the course of such natural streams, watercourses, or course of natural drainage, but may straighten, shorten or change the course of any natural stream, watercourse or general course of drainage.

Sec. 5. Ditch or drain across railroad right of way. When any such ditch or drain crosses any railroad right of way it shall when practicable be located at the place of the natural waterway across such right of way unless said railroad company shall have provided another place in the construction of the road-bed for the flow of the water; and if located at the place provided by the railroad company such company shall be estopped from afterwards objecting to such location on the ground that it is not at the place of the natural waterway.

Sec. 6. Requisites of petition. The owner or owners of at least fifteen per cent (15%) of the land named in the petition described in this section may file in the office of the county auditor a petition for the establishment of a levee or drainage district. But if the district described in the petition is a subdistrict, one or more of the owners of the land affected by the improvement may petition for such subdistrict. The petition shall set forth:

1. An intelligible description of the lands sought to be reclaimed, by congressional divisions or otherwise.
2. That said lands are subject to overflow or are too wet for cultivation.
3. That the public benefit, utility, health, convenience, or welfare will be promoted by leveeing, ditching, tiling or draining said lands, or by changing the watercourses thereon.
4. The starting point, route, terminus, and lateral branches of the proposed improvement.

Sec. 7. Petition for straightening creek or river. When the proposed drainage district involves only the straightening of a creek or river, the board of supervisors shall refuse to consider the petition unless the same is signed by owners of at least twenty-five per cent (25%) of the acreage affected by or assessed for the expense of the proposed improvement. This section shall not affect drainage projects involving the drainage of swamps or sloughs not in the congressional forty (40) acre tracts abutting upon such creek or river.

Sec. 8. Bond to be filed with petition. There shall be filed with the petition a bond in an amount fixed and with sureties approved by the auditor, conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not finally established.

Sec. 8-a. Additional bond. No preliminary expense shall be incurred before the establishment of such proposed improvement district by the board in excess of the amount of bond filed by the petitioners. In case it is necessary to incur any expense in addition to the amount of such bond, the board of supervisors shall require the filing of an additional bond by the petitioners and shall not proceed with the preliminary survey or authorize any additional expense until the additional bond is filed in a sufficient amount to cover such expenses.

Sec. 9. Appointment of engineer - bond. The board shall at its first session thereafter, regular, special or adjourned, appoint a disinterested and competent civil engineer who shall give bond to the county for the use of the proposed levee or drainage district, if it be established, and if not established, for the use of the petitioners, in amount and with sureties to be approved by the auditor, and conditioned for the faithful and competent performance of his duties.

Sec. 10. Compensation of engineers and commissioners. Any engineer employed under the provisions of this chapter shall receive such compensation per diem as shall be fixed and determined by the board of supervisors.

Sec. 11. Discharge of engineer. The board may at any time terminate the contract with and discharge the engineer.

Sec. 12. Assistants to engineer - employment. Assistants may be employed by the engineer only with the approval of the board, which shall fix their compensation. The engineer shall keep an accurate record of the kind of work done by himself and each assistant, the place where done, and the time engaged therein, and shall file an itemized statement thereof with the auditor. No expenses shall be incurred by the engineer except upon authority of the board, and vouchers shall be filed with the claims therefore.

Sec. 13. Survey by engineer. The engineer shall examine the lands described in the petition and any other lands which would be benefited by said improvement or necessary in carrying out the same.

He shall locate and survey such ditches, drains, levees, pumping stations, and other improvements as will be necessary, practicable, and feasible in carrying out the purposes of the petition and which will be of public benefit or utility, or conducive to public health, convenience or welfare.

Sec. 14. Report of engineer. The engineer shall make full written report to the county auditor, setting forth:

1. The starting point, route, and terminus of each ditch, drain, and levee and the character and location of all other improvements.
2. A plat and profile, showing all ditches, drains, levees, and other improvements, the course, length, and depth of each ditch, the length, size and depth of each drain, and the length, width, and height of each levee, through each tract of land, and the particular descriptions and acreage of the land required from each forty acre tract or fraction thereof as right of way, together with the congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor.
3. The boundary of the proposed district, including therein by color or other designation other lands that will be benefited or other areas affected by the proposed improvements, together with the location, size, and elevation of all lakes, ponds, and deep depressions therein.
4. Plans for the most practicable and economic place and method for passing machinery, equipment, and material required in the construction of said improvements across any highways, railroads, and other utilities within the proposed district.
5. The probable cost of the proposed improvements, together with such other facts and recommendations as he shall deem material.

Sec. 15. Procedure on report of engineer. Upon the filing of the report of the engineer recommending the establishment of the levee or drainage district, the board shall at its first regular, adjourned, or special meeting examine and consider the same, and, if the plan is not approved, the board may employ said engineer or another disinterested engineer to report another plan or make additional examination and surveys and file an additional report covering such matters as the board may direct. Additional surveys and reports must be made in

accordance with the provisions of the last two preceding sections. At any time prior to the final adoption of the plans they may be amended, and as finally adopted by the board shall be conclusive unless the action of the board in finally adopting them shall be appealed from as hereinafter provided.

Sec. 16. Notice of hearing. When any plan and report of the engineer has been approved by the board such approval shall be entered of record in its proceedings as a tentative plan only for the establishment of said improvement. Thereupon it shall enter an order fixing a date for the hearing upon the petition not less than forty (40) days from the date of the order of approval and directing the auditor immediately to cause notice to be given to the owner of each tract of land or lot within the proposed levee or drainage district as shown by the transfer books of the auditor's office, including railway companies having right of way in the proposed district and to each lienholder or encumbrancer of any land within the proposed district as shown by the county records and also to all other persons whom it may concern including actual occupants of the land in the proposed district, without naming individuals, of the pendency and prayer of the said petition, the favorable report thereon by the engineer, and that such report may be amended before final action, the approval thereof by the board as a tentative plan and the day and the hour set for hearing on said petition and report and that all claims for damages except claims for land required for right of way and all objections to the establishment of said district for any reason must be made in writing and filed in the office of the auditor at or before the time set for such hearing.

Sec. 17. Service by publication. The notice provided in the preceding section shall be served, except as otherwise hereinafter provided, by publication thereof once each week for two (2) consecutive weeks in some newspaper of general circulation published in the county, the last of which publications shall be not less than twenty (20) days prior to the day set for hearing of the said petition. Proof of such service shall be made by affidavit of the publisher, and be on file with the auditor at the time the hearing begins.

Sec. 18. Service of notice on agent. If any person, corporation, or company owning or having interest in any land or other property affected by any proposed improvement under this act shall file with the auditor an instrument in writing designating the name and postoffice address of his or its agent upon whom service of notice of said proceeding shall be made, the auditor shall, not less than twenty (20) days prior to the date set for hearing upon said petition, send a copy of said notice by registered mail addressed to the agent so designated. Proof of such service shall be made by affidavit of the auditor filed by him in said proceeding at or before the date of the hearing upon the petition, and such service shall be in lieu of all other service of notice to such persons, corporations, or companies. This designation when filed shall be in force for a period of five years thereafter and shall apply to all proceedings under this act during such period. The person, company or corporation making such designation shall have the right to change the agent appointed therein or to amend it in any other particular.

Sec. 19. Personal service of notice. In lieu of publication, personal service of said notice may be made upon any owner of land in the proposed district, or upon any lienholder or other person interested in the proposed improvement, in the manner and for the time required for service of original notices in the district court. Proof of such service shall be on file with the auditor on the date of said hearing.

Sec. 20. Waiver of notice - appearance. No service of notice shall be required upon any person who shall file with the auditor a statement in writing, signed by him, waiving notice, or who enters an appearance in the proceedings. The filing of a claim for damages or objections to the establishment of said district or other pleading shall be deemed an appearance.

Sec. 21. Failure to file claim or objections - waiver. Any person, company, or corporation failing to file any claim for damages or objections to the establishment of the district at or before the time fixed for said hearing, except claims for land required for right of way, shall be held to have waived all objections and claims for damages.

Sec. 22. Adjournment for service on omitted parties. If at the date set for hearing, it shall appear that any person entitled to notice has not been properly served with notice, the board may postpone said hearing and set another time for the same not less than thirty (30) days from said date, and notice of such hearing as hereinbefore provided shall be served on such omitted parties. By fixing such new date for hearing and the adjournment of said proceeding to said date, the board shall not lose jurisdiction of the subject matter of said proceeding nor of any parties already served with notice.

Sec. 23. Hearing of petition - dismissal when. At the time set for hearing on said petition the board shall hear and determine the sufficiency of the petition in form and substance, which petition may be amended at any time before final action thereon, and all objections filed against the establishment of such district, and the board may view the premises included in the said district. If it shall find that the construction of the proposed improvement will not materially benefit said lands or would not be for the public benefit or utility nor conducive to the public health, convenience or welfare, or that the cost thereof is excessive it shall dismiss the proceedings.

Sec. 24. May establish or not when. If the board shall find that such petition complies with the requirements of law in form and substance and that such improvement would be conducive to the public health, convenience, welfare, benefit, or utility and that the cost thereof is not excessive, and no claim shall have been filed for damages, it may locate and establish the said district in accordance with the recommendation of the engineer and the report and plans on file; or it may refuse to establish the proposed district if it deem best, or it may direct the engineer or another one employed for that purpose to make further examination, surveys, plats, profiles and reports for the modification of said plans, or for new plans in accordance with section thirteen (13) and fourteen (14) of this act, and continue further hearing to a fixed date. The county auditor shall appoint three appraisers as provided for in the next section to assess the value of the right of way required for open ditches or other improvements. All parties over whom the board then has jurisdiction shall take notice of such further hearing but any new parties rendered necessary by any modification or change of plans shall be served with notice as for the original establishment of a district.

Sec. 25. Appraisers to assess damages. If the board shall find that such improvement will materially benefit said lands, will be conducive to the public health, convenience, welfare, benefit, or utility, and that the law has been complied with as to form and substance of the petition, the service of notice and the survey and report of the engineer, and that said improvement should be made, then if any claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date of which shall be fixed at the time of adjournment and of which all

interested parties shall take notice, and the auditor shall appoint three (3) appraisers to assess damages, one (1) of whom shall be an engineer, and two (2) freeholders of the county who shall not be interested in nor related to any person interested in the proposed improvement, and the said appraisers shall take and subscribe an oath to examine the said premises, ascertain and impartially assess all damages according to their best judgment, skill and ability.

Sec. 26. Assessment of damages - report. The appraisers appointed to assess damages shall view the premises and determine and fix the amount of damages to which each claimant is entitled and shall place a separate valuation upon the acreage of each owner taken for right of way for open ditches as shown by plat of engineer, and shall, at least five days before the date fixed by the board to hear and determine the same, file with the county auditor reports in writing showing the amount of damage sustained by each claimant. Should the report not be filed in time or should any good cause for delay exist, the board may postpone the time of final action on the subject, and, if necessary, the auditor may appoint other appraisers.

Sec. 27. Award of damages by board - dismissal or final establishment. At the time fixed for hearing and after the filing of the report of the appraisers, the board shall examine said report and may hear evidence thereon, both for and against each claim for damages and compensation and shall determine the amount of damages and compensation due each claimant, and may affirm, increase, or diminish the amount awarded by the appraisers. The board shall at said meeting, or at an adjourned session thereof, consider the costs of construction of said improvement as shown by the reports of the engineer and the amount of damages and compensation awarded to all claimants, and, if in its opinion, such costs of construction and amount of damages awarded create a greater burden than should justly be borne by the lands benefited by the improvement, it shall then dismiss the petition and assess the costs and expenses to the petitioners and their bondsmen, but if it finds that such cost and expense is not a greater burden than should be justly borne by the land benefited by the improvement, it shall finally and permanently locate and establish said district and improvement.

Sec. 27-a. Dismissal on remonstrance. If, at or before the time set for final hearing as to the establishment of a proposed levee, drainage or improvement district, except subdrainage district there shall have been filed with the county auditor, or auditors, in case the district extends into more than one county, a remonstrance signed by a majority of the land owners in the district, and these remonstrants must in the aggregate own seventy per cent (70%) or more of the lands to be assessed for benefits or taxed for said improvements, remonstrating against the establishment of said levee, drainage or improvement district, setting forth the reasons therefor, the board or boards as the case may be, shall assess to the petitioners and their bondsmen or the remonstrators, or apportion the costs among them as the board or boards may deem just or as said parties may agree upon. When all such costs have been paid, the board or boards of supervisors shall dismiss said proceedings and cause to be filed with the county auditor all surveys, plats, reports and records in relation to the proposed district.

Sec. 27-b. Dissolution. When for a period of two (2) years from and after the date of the establishment of a drainage district or when an appeal is taken or litigation brought against said district, within two years from the date, such appeal or litigation is finally determined, no contract shall have been let or work done or drainage certificates or bonds issued for the construction of the improvements in such district, a petition may be filed in the office of the auditor, addressed to the board of supervisors, signed by a majority of the persons owning land in such district and who, in the aggregate, own seventy per cent (70%) or more of all the land embraced in said district, setting forth

the above facts and reciting that provision has been made by the petitioners for the payment of all costs and expenses incurred on account of such district. The board shall examine such petition at its next meeting after the filing thereof, and if found to comply with the above requirements, shall dissolve and vacate said district by resolution entered upon its records, to become effective upon the payment of all the costs and expenses incurred in relation to said district. In case of such vacation and dissolution and upon payment of all costs as herein provided, the auditor shall note the same on the drainage record, showing the date when such dissolution became effective.

Sec. 27-a. Permanent survey, plat, and profile. When the improvement has been finally located and established, the board may if necessary appoint the said engineer or a new one to make a permanent survey of said improvement as so located, showing the levels and elevations of each forty-acre tract of land and file a report of the same with the county auditor together with a plat and profile thereof.

Sec. 28. Damages and compensation - by whom paid. The amount of damages or compensation finally determined in favor of any claimant shall be paid in the first instance by the parties benefited by the said improvement or secured by bond in the amount of such damages and compensation with sureties approved by the auditor.

Sec. 29. Division into sections. After the damages as finally fixed, shall have been paid or secured, the board shall divide said improvement into suitable sections, having regard to the kind of work to be done, numbering the same consecutively from outlets to the beginning, and prescribing the time within which the improvement shall be completed.

Sec. 30. Supervising engineer - bond. Upon the payment or securing of damages the board shall appoint a competent engineer to have charge of the work of construction thereof, who shall be required before entering upon the work to give a bond to the county for the use and benefit of the levee or drainage district to be approved by the auditor in such sum as the board may fix, conditioned for the faithful discharge of his duties.

Sec. 32. Reports and all other documents belong to district. All reports, maps, plats, profiles, field notes, and other documents pertaining to said matters, including all schedules, and memoranda relating to assessment of damages and benefits, shall belong to the district to which they relate, remain on file in the office of the county auditor, and be matters of permanent record of drainage proceedings.

Sec. 33. Advertisement for bids. The board shall cause notice to be given by publication once each week for two (2) consecutive weeks in some newspaper published in the county wherein such improvement is located, and such additional advertisement and publication elsewhere as it may direct, of the time and place of letting the work of construction of said improvement, specifying the approximate amount of work to be done in each numbered section of the district, the time fixed for the commencement, which shall not be prior to the date on which the assessment shall be fixed by the board, and the time of the completion thereof, that bids will be received on the entire work and in sections or divisions thereof, and that each bidder will be required to deposit with his bid cash or certified check on and certified by a bank in Iowa payable to the auditor or his order at his office in an amount equal to ten per cent (10%) of his bid, in no case to exceed \$10,000. When the estimated cost of the improvement exceeds fifteen thousand dollars (\$15,000.00), the board shall make additional publication of such notice as the board may prescribe for two (2) consecutive weeks in some contractors' journal of general circulation. All notices shall fix the date to which bids will be received and upon which said work will be let.

Sec. 34. Bids - letting of work. The board shall award contract or contracts for each section of the work to the lowest responsible bidder or bidders therefor, bids to be submitted, received and acted upon separately as to the main drain and each of the laterals, exercising their own discretion as to letting such work as to the main drain as a whole, or as to each lateral as a whole or by sections as to both main drain and laterals, and reserving the right to reject any and all bids and readvertise the letting of the work.

Sec. 35. Manner of making bids - deposit. Each bid shall be in writing specifying the portion of the work upon which the bid is made, and filed with the auditor, accompanied with a deposit of cash or a certified check on and certified by a bank in Iowa payable to the auditor or his order at his office in a sum equal to ten per cent (10%) of the amount of the bid, but in any event not to exceed ten thousand dollars (\$10,000.00). The checks of unsuccessful bidders shall be returned to them, but the checks of successful bidders shall be held as a guarantee that they will enter into contract in accordance with their bids.

Sec. 36. Bond of successful bidder - return of check. Each successful bidder shall be required to execute a bond with sureties approved by the auditor in favor of the county for the use and benefit of the levee or drainage district and all persons entitled to liens for labor or material in an amount not less than seventy-five per cent (75%) of the contract price of the work to be done, conditioned for the timely, efficient, and complete performance of his contract, and the payment, as they become due, of all just claims for labor performed and material used in carrying out said contract. When such contract is executed and bond approved by the board, the certified check deposited with the bid shall be returned to the bidder.

Sec. 37. Contracts for work and materials. All agreements and contracts for work or materials in constructing the improvements of such district shall be in writing, signed by the chairman of the board of supervisors for and on behalf of the district and the parties who are to perform the work or furnish the materials specified in such contract. Such contract shall specify the particular work to be done or materials to be furnished, the time when it shall begin and when it shall be completed, the amount to be paid and the times of payment, with such other terms and conditions as to details necessary to a clear understanding of the terms thereof.

Sec. 38. Commissioners to classify and assess. When a levee or drainage district shall have been located and finally established and the contracts for construction let, or, unless otherwise provided by law when the required proceedings have been taken to enlarge, widen, change, or extend any of the ditches, laterals, or drains of such district, or the required proceedings have been had to annex additional lands to such district, the board shall appoint three (3) commissioners to assess benefits and classify the lands affected by such improvement. One (1) of such commissioners shall be a competent, civil engineer and two (2) of them shall be resident free holders of the county in which the district is located, but not living within, nor interested in any lands included in, said district, nor related to any party whose land is affected thereby. The commissioners shall take and subscribe an oath of their qualifications and to perform the duties of classification of said lands, fix the percentages of benefits and apportion and assess the costs and expenses of constructing the said improvement according to law and their best judgment, skill, and ability. If said commissioners or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the board shall appoint others with like qualifications to take their places and perform said duties.

Sec. 39. Duties of commissioners - time for performance. At the time of appointing said commissioners, the board shall fix the time within which said assessment, classification and apportionment shall be made, which may be extended for good cause shown. Within twenty (20) days after their appointment, they shall begin to inspect and classify all the lands within said district or any change, extension, enlargement or relocation thereof in tracts of forty (40) acres, or less according to the legal or recognized sub-divisions, in a graduated scale of benefits to be numbered according to the benefit to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the auditor. The lands receiving the greatest benefit shall be marked on a scale of one hundred (100) and those benefited in a less degree with such percentage of one hundred (100) as the benefits received bear in proportion thereto. They shall also make an equitable apportionment of the costs, expenses, fees, and damages computed on the basis of the percentages fixed.

Sec. 40. General rules of classification. This classification when finally established shall remain as a basis for all future assessments connected with the objects of said levee or drainage district, unless the board for good cause shall authorize a revision thereof. In the report of the appraisers so appointed they shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

In estimating the benefits as to the lands not traversed by said improvement they shall not consider what benefits such land shall receive after some other improvements shall have been constructed, but only the benefits which will be received by reason of the construction of the improvement in question as it affords an outlet to the drainage of such lands, or brings an outlet nearer to said lands or relieves the same from overflow.

Sec. 41. Basis of assessment for lateral ditches and drains. In fixing the percentages and assessment of benefits and apportionment of costs of construction on lands benefited by lateral ditches and drains as a part of the entire improvement to be made in a drainage district, the commissioners shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches on the same basis and in the same manner as if said lateral was with its sublaterals, being constructed as a subdistrict as provided in this chapter, reporting separately:

1. The percentage of benefits and amount accruing to each forty (40) acre tract or less on account of the construction of the main ditch, drain or watercourse including pumping plant, if any.

2. The percentage of benefits and amount accruing to each forty (40) acre tract or less on account of the construction of such lateral improvement.

Sec. 42. Assessment of railroad property - collection. The commissioners to assess benefits and make apportionment of costs and expenses shall determine and assess the benefits to the property of any railroad company extending into or through the levee or drainage district and make return thereof showing the benefit and the apportionment of costs and expenses of construction. Such assessment when finally fixed by the board shall constitute a debt due from the railroad company to the district, and unless paid it may be collected by ordinary proceedings for the district in the name of the county in any court having jurisdiction. All other proceedings in relation to railroads except as otherwise provided shall be the same as provided for individual property owners within the levee or drainage district.

Sec. 43. Public highways - assessment of benefits. When any public highway extends into or through a levee or drainage district the commissioners to assess shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such highway and the board of supervisors shall assess the same against such highway. Such assessments against primary highways shall be paid out of the county's allotment of the primary road fund and against all other highways, one-fourth out of the county road fund or county drainage fund, and three-fourths out of the township road fund or township drainage fund. Such assessments shall draw interest at the same rate and from the same time as assessments against lands.

Sec. 44. Report of commissioners to classify. The commissioners, within the time fixed or as extended, shall make and file in the auditor's office a written verified report in tabulated form as to each forty (40) acre tract, and each tract of less than forty (40) acres, setting forth:

1. The names of the owners thereof as shown by the transfer books of the auditor's office or the reports of the engineer on file, showing said entire classification of lands in said district.

2. The amount of benefits to highway and railroad property and the percentage of benefits to each of said other tracts and the apportionment and amount of assessment of cost and expense against each:

a. For main ditches.

b. For laterals.

c. For levees and pumping station.

3. The aggregate amount of all assessments.

Sec. 45. Notice - hearing as to assessment. The board shall fix a time for a hearing upon the report of the commissioners, and the auditor shall cause notice to be served upon each person whose name appears as owner, naming him and also upon the person or persons in actual occupancy of any tract of land, without naming him of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as is provided for the establishment of a levee or drainage district, and shall state the amount of assessment of costs and expenses of construction apportioned to each owner upon each forty acre tract or less, and that all objections thereto must be in writing and filed with the auditor at or before the time set for such hearing. At the time fixed or at an adjourned hearing, the board shall hear and determine all objections filed to said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said district as may appear to the board to be just and equitable.

The classification as finally adopted shall remain the basis of all future assessments for the purpose of said district unless revised by the board in the manner provided for reclassification. If the first assessment made by the board for the original cost or for repairs of any improvement is insufficient, the board shall make an additional assessment and levy in the same ratio as the first for either purpose, payable at the next taxpaying period after such indebtedness is incurred subject, however, to the provisions of section 49 and section 107 of this act.

Sec. 46. Evidence - argument - levy. At such hearing, the board may hear evidence both for and against the approval of said report or any portion thereof, but it shall not be competent to show that any of the lands in said district assessed for benefits or against which an apportionment of costs and expenses has been made will not be benefited by such improvement in some degree.

Any interested party may be heard in argument by himself or counsel. The board shall cause notice to be served upon the owner of any tract of land against which it is proposed to increase the assessment, requiring him to appear at a fixed date, not less than ten (10) nor more than twenty (20) days from the date of service, and show cause why such assessment should not be so increased, which notice shall be served in the same manner as an original notice upon residents of the county or counties in which the district is located, and upon nonresidents of the county or counties by service on any tenant or occupant of the land affected, and upon any agent of any railroad company affected. When the board has finally determined the matter of assessments of benefits and apportionment, it shall levy such assessments as fixed by it upon the lands within such district, and all assessments shall be levied at that time as a tax and shall bear interest at six per cent (6%) per annum from that date, payable annually except as hereinafter provided as to cash payments thereof within a specified time. Such taxes shall be a lien upon all premises against which they are assessed as fully as taxes levied for state and county purposes.

Sec. 47. Record of drainage taxes - separate fund. All drainage or levee tax assessments shall be entered in the drainage record of the district to which they apply and also upon the tax records of each county.

All drainage or levee tax assessments shall become due and payable at the same time as other taxes and shall be collected in the same manner with the same penalties for delinquency and the same manner of enforcing collection by tax sales.

Such taxes when collected shall be kept in a separate fund known as the drainage or levee fund of the district to which they belong, and shall be paid out only for purposes properly connected with and growing out of the drainage or levee improvement of such district and on order of the board. Interest collected by the treasurer on drainage or levee districts funds shall be credited to the drainage or levee district to which such funds belong.

Sec. 48. Payment of assessments before bond or certificate issue. All assessments for benefits, as corrected and approved by the board, shall be levied at one time against the property benefited, and when levied and certified by the board, shall be payable at the office of the county treasurer. Each person or corporation shall have the right, within twenty (20) days after the levy of assessments, to pay his or its assessment in full without interest, and before any improvement certificate or drainage bond is issued therefor, and any certificate at any time after issue, with accrued interest.

Sec. 49. Installment payments - waiver. If the owner of any premises against which a levy exceeding twenty dollars (\$20.00) has been made and certified shall, within thirty (30) days from the date of such levy, agree in writing indorsed upon any improvement certificate referred to in section sixty hereof or in a separate agreement, that in consideration of having a right to pay his assessment in installments, he will not make any objection as to the legality of his assessment for benefit, or the levy of the taxes against his property, then such owner shall have the following options as to such payments:

1. One-third (1/3) of the amount of such assessment at the time of filing such agreement; one-third (1/3) within twenty (20) days after the engineer in charge shall certify to the auditor that the improvement is one-half (1/2) completed; and the remaining one-third (1/3) within twenty (20) days after the improvement has been completed and accepted by the board. All such installments shall be without interest if paid at said times, otherwise said assessments shall bear interest from the date of the levy at the rate of six per cent (6%) per annum, payable annually, and be collected as other taxes on real estate, with like penalty for delinquency.

2. Such assessments may be paid in not less than ten (10) nor more than twenty (20) equal installments, the number to be fixed by the board and shall bear interest at the rate fixed by the board, not exceeding six per cent (6%) per annum. One such installment shall be payable at the March semiannual tax paying date in each year; provided, however, that the county treasurer shall, at the March semiannual tax-paying date, require only the payment of a sufficient portion of the assessments to meet the interest and the amount maturing on bonds or certificates prior to the regular time for the payment of the second installment of taxes and the balance shall be collected with such second installment and without penalty. If the board of supervisors provides for the issuance of improvement certificates by the owners of lands, the township trustees may execute waivers, and there may be issued improvement certificates for such part of the assessment for benefits to highways as is to be paid by the township, such waivers and certificates to conform as nearly as may be to those executed upon the assessments against lands.

Sec. 49-a1. Option of installment payments after appeal. When an owner takes an appeal from the assessment against any of his land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal he shall file in the office of the auditor his written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest paying date.

Sec. 50. Auditor to give notice of half completion - completion. Within two (2) days after the engineer has filed a certificate that the work is half completed and within two (2) days after the board of supervisors has accepted the completed improvement as in this chapter provided, the county auditor shall notify the owner of each lot or parcel of land who has signed an agreement of waiver as provided in the preceding section, of such fact. Such notice shall be given by registered mail sent to such owners, respectively, at the addresses filed with the auditor at the time of making such agreement of waiver.

Sec. 51. Deferred installments - when lien attaches. No deferred installment of the amount assessed as between vendor and vendee, mortgagor and mortgagee shall become a lien upon the property against which it is assessed and levied until the thirty-first (31st) day of December of the year next preceding that in which it is due and payable.

Sec. 51-a1. In all cases where a drainage district has been constructed consisting of main ditches which are beneficial to the entire district, and also of laterals, and where the assessments have been made based upon the estimated cost of such laterals and it can be ascertained that the actual cost of constructing such laterals was less than such estimated cost thereof, then the board of supervisors or joint board of supervisors or other officers having control of such drainage district shall be, and hereby are, authorized and directed to return to the party or parties who owned the land benefited and assessed for such laterals at the time the assessment was fixed and levied by the board or boards of supervisors the respective proportional parts of such excess assessments made for such laterals by the issue of warrants drawn upon the district fund.

Sec. 52. Subdrainage district - how established. After the establishment of a drainage district, any person, company or corporation owning land within such district which has been assessed for benefits, but which is separated from the main ditch, drain, or watercourse for which it has been so assessed, by the land of others, who desires a ditch or drain constructed from his land across the land of such others in order to connect with the main ditch, drain, or watercourse, and shall be unable to agree with such intervening owners on the terms and

conditions on which he may enter upon their lands and cause to be constructed such connecting drain or ditch, may file a petition for the establishment of a subdistrict and thereafter the proceedings shall be the same as provided for the establishment of an original district. Such connecting ditch or drain which he shall cause to be constructed shall be presumed conducive to the public health, welfare, convenience, and utility the same as if it had been so constructed as a part of the original improvement of said district. When such sub-district has been established and constructed it shall become and be a part of the improvement of such drainage district as a whole and be under the control and supervision of the board to the same extent and in every way as if it had been a part of the original improvement of such district.

Sec. 54. Reclassification generally. After a drainage or levee district has been established and the improvements thereof constructed and put in operation, if the board or boards shall find that the original assessments are not equitable as a basis for the expenses of any enlargement or extension thereof which may have become necessary, they shall order a new classification of all the lands in said district by resolution, and appoint three (3) commissioners, one (1) of whom shall be a civil engineer with qualifications as provided in this chapter and two (2) of whom shall be resident freeholders of the county not living within any township into which the improvement extends, and not interested therein nor related to any party whose land is affected thereby, who shall be duly sworn as hereinbefore provided for such commissioners.

In case the board shall finally determine that any such changes shall be made involving an expenditure of Five Thousand Dollars (\$5,000.00) or more, said work shall be let by bids in the same manner as is provided for the original construction of such improvements.

Sec. 55. Rules governing reclassification. The proceedings for such reclassification shall in all particulars be governed by the same rules as for original classification. The commissioners shall fix the percentage of actual benefits and make an equitable apportionment of the costs and expenses of construction, enlargement, or extension and file a report thereof with the auditor in the same form and manner as for original classification. Thereafter all the proceedings in relation thereto as to notice, hearing, and fixing of percentage of benefits and amount of assessments shall be as in this chapter provided in relation to original classification and assessments, and at such hearing the board may affirm, increase or diminish the percentage and assessment of benefits and apportionment of costs and expenses so as to make them just and equitable, and cause the record of the original classification, percentage of benefits, and assessments to be modified accordingly.

Sec. 56. Drainage warrants received for taxes and assessments. Warrants drawn upon the funds of any district shall be accepted by the treasurer in payment of assessments levied upon any lands in that district owned by the persons to whom said warrants were issued, and when the amount of the warrant exceeds the amount of the assessment, the treasurer shall cancel the said warrant, and give the holder thereof a certificate for the amount of such excess, which certificate shall be filed with the auditor, who shall issue a warrant for the amount of such excess, and charge the treasurer therewith. Such certificate is transferable by indorsement, and will entitle the holder to the new warrant, made payable to his order, and bearing the original number, preceded by the words, "Issued as unpaid balance due on warrant number \_\_\_\_\_".

Sec. 57. Warrants unpaid - calls - payment. All warrants drawn upon the funds of any drainage district, which can not be paid for want of funds, shall bear interest at the rate of six per cent (6%) per annum, payable annually, from and after the date of presentation thereof to the treasurer. The treasurer shall indorse such warrants "Not paid for want of funds", keep a record of the same, together with the name and postoffice address of the holder, issue calls for outstanding warrants at such times as he may have funds to pay the same, and pay such warrants under the same procedure as is provided by law in relation to county warrants generally. No additional presentation of warrants shall be required to entitle the holder to interest on overdue annual interest.

Sec. 58. Assignee to notify treasurer - name and address. When such drainage warrant shall be assigned and transferred after having been so indorsed by the treasurer, the assignee thereof shall notify the treasurer of such assignment, giving the treasurer his name and postoffice address; and upon receipt of such notice by the treasurer he shall make a memorandum in the record kept of such warrant, showing the name and address of each successive assignee or holder.

Sec. 59. Call mailed to owner - interest to cease. When the treasurer shall have funds on hands to pay any such warrant or warrants, he shall, in addition to the call provided by law for calling for payment of county warrants generally, mail a written notice of such call to the then holder thereof as shown by his said record, and shall make a record of the date of mailing such notice, and at the expiration of thirty (30) days thereafter if such warrants are not presented for payment, interest thereon shall cease.

Sec. 60. Improvement certificates. The board may provide by resolution for the issuance of improvement certificates payable to bearer or to the contractors, naming them, who have constructed the said improvement or completed any part thereof, in payment or part payment of such work.

Sec. 61. Certificates negotiable - what to contain. Each of such certificates shall state the amount of one (1) or more drainage assessments or part thereof made against the property, designating it and the owner thereof liable for the payment of such assessments. Said certificates shall be negotiable and transfer to the bearer all right and interest in and to the tax in every such assessment or part thereof described in such certificates, and shall authorize such bearer to collect and receive every assessment embraced in said certificate by or through any of the methods provided by law for their collection as the same mature.

Sec 62. Interest on certificates. Such certificates shall bear interest not to exceed six per cent (6%) per annum, payable annually, and shall be paid by the taxpayer to the county treasurer, who shall receipt for the same and cause the amount to be credited on the certificates issued therefor.

Sec. 63. Certificate negotiable at par - payable at any date. Any person shall have the right to pay the amount of his assessment represented by any outstanding improvement certificate, with the interest thereon to the date of such payment, at any time. No improvement certificate shall be issued or negotiated for the use of the drainage district for less than par value with accrued interest up to the delivery or transfer thereof. Every such certificate, when paid, shall be delivered to the treasurer and by him surrendered to the party to whose assessment it relates.

Sec. 64. Drainage bonds - when issued. When a drainage district has been established or the making of any subsequent repair or improvement determined upon, if the board of supervisors shall find that the cost of such improvements will create assessments against the land included therein greater than should be levied in a single year upon the lands benefited by such improvement, then, instead of issuing improvement certificates, as provided in the four (4) preceding sections, the board may fix the amount that shall be levied and collected each year until such cost and expenses are paid, and may issue drainage bonds of the county covering all assessments exclusive of assessments of twenty dollars (\$20.00) and less.

Sec. 65. Time for issuing bonds. The bonds issued under the provisions of the preceding and the six (6) following sections or the proceeds thereof shall be issued in time to be available for the use of the district at a date not later than ninety (90) days after the actual commencement of the work on the improvements of such district; but in districts where an appeal or appeals have been taken, not later than ninety days after such appeals have been finally determined.

Sec. 66. Amount - maturity - rate of interest. Such bonds shall not be issued for a greater amount than the aggregate amount of assessments for the payment of which they are issued, nor for a longer period of maturity than twenty (20) years, and bear a rate of interest not to exceed five per cent (5%) per annum, payable semiannually, on June first and December first of each year.

Sec. 67. Sale or application not less than par - premium. Such bonds may be applied at par with accrued interest to the payment of work as it progresses upon the improvements of the district, or, the board may sell, through the county treasurer, said bonds at not less than par with accrued interest and devote the proceeds to such payment. Any premium derived from the sale of said bonds shall be credited to the drainage fund of the district.

If any levy of assessments is not sufficient to meet the interest and principal of outstanding bonds, additional assessments may be made on the same classification as the previous ones. Additional bond issues may be made when necessary to complete full payment for improvements, by the same proceedings as previous issues.

Sec. 68. Right to pay in cash - time fixed - minimum. All assessments of twenty dollars (\$20.00) and less shall be paid in cash. The board at the time of making the levy, shall fix a time within which all assessments in excess of twenty dollars (\$20.00) may be paid in cash, and before any bonds are issued, publish notice in an official newspaper in the county where the district is located, of such time. After the expiration of such time, no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issue of the bonds.

Sec. 69. Drainage bond - what to contain. Each of such bonds shall be numbered and have printed upon its face that it is a "Drainage Bond", stating the county and number of the district for which it is issued, the date and maturity thereof, that it is in pursuance of a resolution of the board of supervisors, that it is to be paid only from taxes for levee and drainage improvement purposes levied and collected on the lands assessed for benefits within the district for which the bond is issued. A record of the numbers, amounts, and maturities of all such bonds shall be kept by the auditor showing specifically the lands embraced in the district upon which the tax has not been previously paid in full. In no case shall the aggregate amount of all bonds issued exceed the benefits assessed.

Sec. 71. Amount - maturity - interest - highway benefits. The board shall fix the amount, maturity, and interest of all bonds to be issued. It shall determine the amount of assessments to highways for benefits within the district to be covered by each bond issue. The taxes levied for benefits to highways within any drainage or levee district shall be paid at the same times and in the same proportion as assessments against the land of private owners.

Sec. 72. Appeals from final actions of the board. Any person aggrieved may appeal from any final action of the board in relation to any matter involving his rights, to the district court of the county in which the proceeding was held.

Sec. 73. Appeals in inter-county districts. In districts extending into two (2) or more counties appeals from final orders resulting from the joint action of the several boards or the board of trustees of such district may be taken to the district court of any county into which the district extends.

Sec. 74. Time and manner of taking appeals. All appeals shall be taken within twenty (20) days after the date of final action or order of the board from which such appeal is taken by filing with the auditor a notice of appeal designating the court to which the appeal is taken, the order or action appealed from, and stating that the appeal will come on for hearing at the next succeeding term of the court and designating such term. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court.

Sec. 75. Duty of auditor.- when appeal taken. When notice of any appeal with the bond as required by the preceding section shall be filed with the auditor, he shall forthwith make and certify a transcript of the notice of appeal and appeal bond, and file the same with the clerk.

Sec. 76. Petition on appeal - docket fee - waiver - dismissal. On or before the first day of the next succeeding term of court, the appellant shall file a petition setting forth the order or final action of the board appealed from and the grounds of his objections and his complaint, with a copy of his claim for damages or objections filed by him with the auditor. He shall pay to the clerk the filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same. It shall not be necessary for the appellees to file an answer to the petition unless some affirmative defense is made thereto, but they may do so.

Sec. 77. Actions and appeals - proper parties. In all actions or appeals affecting the district, the board of supervisors shall be a proper party for the purpose of representing the district and all interested parties therein, other than the adversary parties, and the employment of counsel by the board shall be for the purpose of protecting the rights of the district and interested parties therein other than the adversary parties. In all appeals or actions adversary to the district, the appellant or complaining party shall be entitled the plaintiff, and the board of supervisors and drainage district it represents, the defendants, and in all appeals or actions for or in behalf of the district, the board and the drainage district it represents may sue as the plaintiffs.

Sec 78. When appeals triable at law - when in equity. Appeals from orders or actions of the board fixing the amount of compensation for lands taken for right of way or the amount of damages to which any claimant is entitled shall be tried as ordinary proceedings. All other appeals shall be triable in equity. The court may, in its discretion, order the consolidation for trial of two or more of such equitable cases.

Sec. 80. Evidence not competent on appeal. On the trial of an appeal from the action of the board in fixing and assessing the amount of benefits to any land within the district as established, it shall not be competent to show that any lands assessed for benefits within said district as established are not benefited in some degree by the construction of the said improvement.

Sec. 81. Order of court as to damages found - duty of clerk - cost. If the appeal is from the action of the board as to the amount of damages or compensation awarded, the amount found by the court shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk of said court to the board of supervisors who shall thereafter proceed as if such amount had been by it allowed to the claimant. Unless the result on the appeal is more favorable to the appellant than the action of the board, all costs of the appeal shall be taxed to the appellant, but if more favorable, the cost shall be taxed to the appellees.

Sec. 83. Decree on appeal as to establishing district - transcript - costs. On appeal from the action of the board in establishing or refusing to establish said district, or in including land within the district, the court may enter such order or decree as may be equitable and just in the premises, and the clerk of said court shall certify the decree or order to the board of supervisors which shall proceed thereafter in said matter as if such order had been made by the board. The taxation of costs among the litigants shall be in the discretion of the court.

Sec. 84. Exclusive remedy. Upon appeal the decisions of the court, shall in no manner affect the rights or liabilities of any person who did not appeal. The remedy by appeal provided for in this chapter shall be exclusive of all other remedies.

Sec. 85. Reversal by court - rescission by board. In any case where the decree has been entered setting aside the establishment of a drainage district for errors in the proceedings, and such decree becomes final, the board shall rescind its order establishing the drainage district, assessing benefits, and levying the tax based thereon, and shall also cancel any contract made for construction work or material, and shall refund any and all assessments paid.

Sec. 86. Proceedings after setting aside for errors. After the court on appeal has entered a decree revising or modifying the action of the board, the board shall fix a new date for hearing, and proceed in all particulars in the manner provided for the original establishment of the district, avoiding the errors and irregularities for which the original establishment was set aside, and after a valid establishment thereof, proceed in all particulars as provided by law in relation to the original establishment of such districts.

Sec. 86-a1. Reassessment to cure illegality. Whenever any special assessment upon any lands within any drainage district shall have been heretofore adjudged to be void for any jurisdictional defect or for any illegality or uncertainty as to the terms of any contract and the improvement shall have been wholly completed, the board or boards of supervisors shall have power to remedy such illegality or uncertainty as to the terms of any such contract with the consent of the person with whom such contract shall have been entered into and make certain the terms of such contract and shall then cause a re-assessment of such land to be made on an equitable basis with the other land in the district by taking the steps required by law in the making of an original assessment and relieving the tax in accordance with such assessment, and such tax shall have the same force and effect as though the board or boards of supervisors had jurisdiction in the first instance and no illegality or uncertainty existed in the contract.

Sec. 87. Monthly estimate - payment. The supervising engineer shall, on or before the tenth day of each calendar month, furnish the contractor and file with the auditor estimates for work done during the preceding calendar month under the contract on each section, and the auditor shall at once draw warrants in favor of such contractor on the drainage funds of the district or give him an order directing the county treasurer to deliver to him or them improvement certificates, or drainage bonds as the case may be for eighty per cent (80%) of the estimate on work done. Such monthly estimates shall remain on file in the office of the auditor as a part of the permanent records of the district to which they relate.

Sec. 88. Completion of work - report - notice - hearing. When the work to be done under any contract is completed to the satisfaction of the engineer in charge of construction, he shall so report and certify to the board, which shall fix a day to consider said report and shall give notice of the time and purpose of such meeting by one (1) publication in a newspaper of general circulation published in the county seat in said county and the date fixed for considering said report shall be not less than five (5) days after the date of such publication.

Sec. 89. Objections to report of completion. Any party interested in the said district or the improvement thereof may file objections to said report and submit any evidence tending to show said report should not be accepted.

Sec. 90. Settlement when work completed. If it finds the work under any contract has been completed and accepted, the board shall compute the balance due, and if there are no liens on file against such balance, it shall enter of record an order directing the auditor to draw a warrant in favor of said contractor upon the levee or drainage fund of said district or give him an order directing the county treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, for such balance found to be due, but such warrants, improvement certificates or bonds shall not be delivered to the contractor until the expiration of thirty (30) days after the acceptance of the work.

Sec. 91. Abandonment of work before completion - demand. In case any contractor abandons or fails to proceed diligently and properly with the work before completion, or in case he fails to complete the same in the time and according to the terms of the contract, the board shall make written demand on him and his surety to proceed with the work within ten (10) days. Service of said demand may be personal, or by registered mail addressed to the contractor and the surety, respectively, at their places of residence or business, as shown by the records in the auditor's office.

Sec. 92. New contract - suit on bond. Unless the contractor or the surety on his bond shall appear and in good faith proceed to comply with the demand, and resume work under the contract within the time fixed, the board shall proceed to let contracts for the unfinished work in the same manner as original contracts, and apply all funds not paid to the original contractor toward the completion of the work, and if not sufficient for such purpose, may cause suit to be brought upon the bond of the defaulting contractor for the benefit of the district, and the amount of recovery thereon shall be credited to the district.

Sec. 94. Construction on or along highway. When a levee or drainage district shall have been established by the board and it shall become necessary or desirable that the levee, ditch, drain, or improvement shall be located and constructed within the limits of any public highway, it shall be so built as not materially to interfere with the public travel thereon; and the board shall have power to establish public highways along and upon any levee or embankment along any such ditch or drain, but when so established the same shall be worked and maintained as other highways and so as not to obstruct or impair the levee, ditch, or drain.

Sec. 95. Construction across highway. When such levee, ditch, drain, or change of any natural watercourse crosses a public highway, necessitating moving or building or rebuilding any county or township bridge, the board of supervisors shall move, build or rebuild the same, paying the costs and expenses thereof from the county bridge fund, or primary road fund.

Sec. 96. Construction across railroad - notice. Whenever the board of supervisors shall have established any levee, or drainage district, or change of any natural watercourse and the levee, ditch, drain or watercourse as surveyed and located crosses the right of way of any railroad company, the county auditor shall immediately cause to be served upon such railroad company, in the manner provided for the service of original notices, a notice stating the nature of the improvement to be constructed, the place where it will cross the right of way of such company, and the full requirements for its complete construction across such right of way as shown by the plans, specifications, plat and profile of the engineer appointed by the board, and directing such company to construct such improvement according to said plans and specifications at the place designated, across its right of way, and to build and construct or rebuild and reconstruct the necessary culvert or bridge where any ditch, drain or watercourse crosses its right of way, so as not to obstruct, impede or interfere with the free flow of the water therein, within thirty (30) days from the time of the service of such notice upon it.

Sec. 97. Duty of railroad company - expense. Upon receiving the notice provided in the preceding section, such railroad company shall construct the improvement across its right of way according to the plans and specifications prepared by the engineer for said district, and build or rebuild the necessary culvert or bridge and complete the same within the time specified.

The cost of building, rebuilding, constructing, reconstructing, changing, or repairing, as the case may be, any culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be borne by such railroad company without reimbursement therefor.

Sec. 98. Construction when company refuses. If the railroad company shall fail, neglect, or refuse to comply with said notice, the board shall cause the same to be done under the supervision of the engineer in charge of the improvement, and such railroad company shall be liable for the cost thereof to be collected by the county for said district in any court having jurisdiction. The cost of constructing the improvement across the right of way of such company, not including the cost of building or rebuilding and constructing or reconstructing any necessary culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be considered as an element of such company's damages by the appraiser to appraise damages.

Sec. 99. Passage across railway right of way for equipment. It shall be the duty of any steam or electric railway company to furnish the contractor unrestricted passage across its right of way, telegraph, telephone and signal lines for his machines and equipment, whenever recommended by the engineer and approved by the board of supervisors and the cost thereof, shall be considered as an element of such company's damages by the appraisers thereof; provided that if such company shall fail to do so within thirty (30) days after written notice from the auditor, the engineer shall cause the same to be done under his direction and the company shall be liable for the cost thereof to be collected by the county in any court having jurisdiction. Provided, further, that the railway company shall have the right to designate the day and hours thereof within said period of thirty (30) days above mentioned when such crossing shall be made.

Sec. 100. Passage across public utilities other than railways. The owner or operator of a public utility, whether operated publicly or privately other than steam and electric railways shall afford the contractor of any drainage project under this act unrestricted passage for his machines and equipment across the right of way, lines or other equipment of such utility whenever recommended by the engineer and approved by the board of supervisors.

Sec. 101. Failure to comply by utilities mentioned in preceding section. If the owner or operator of the utility fails to afford such passage within fifteen (15) days after written notice from the drainage engineer so to do, the contractor, under the supervision of the engineer, may proceed to do the necessary work to afford such passage and to place said utility in the same condition as before said passage; but the owner or operator shall have the right to designate the hours of the day when such crossing or passage shall be made.

Sec. 102. Expenses. The work necessary to afford such passage shall be deemed to be covered by and included in the contract with the district under which the contractor is operating and if the work is done by the owner or operator of such utility the reasonable expense thereof shall be paid out of the drainage funds of the district and charged to the account of the contractor.

Sec. 103. Annexation of additional lands. After the establishment of a levee or drainage district, if the board becomes convinced that additional lands are benefited by the improvement and should have been included in the district as originally established, it may adopt a resolution of necessity for annexation of such additional land and appoint an engineer with the qualifications provided in this chapter to examine such additional lands, to make a survey and plat thereof showing their relation, elevation, and conditions of drainage with reference to such established district, and to make and file with the auditor a report as in this chapter provided for the original establishment of such district.

Sec. 104. Proceedings on report for annexation. If said report recommends the annexation of such lands or any portion thereof, the board shall consider such report, plats, and profiles and if satisfied that any of such lands are materially benefited by the district and that such annexation is feasible, expedient, and for the public good, it shall proceed in all respects as to notice, hearing, appointment of appraisers to fix damages and as to hearing thereon; and (if such annexation is finally made,) as to classification and assessment of benefits to the same extent and in the same manner as provided in the establishment of an original district. All parties shall have the right to receive notice, to make objections, to file claims for damages, to have hearing, to take appeals and to do all other things to the same extent and in the same manner as provided in the establishment of an original district.

Sec. 105. Proceedings to annex begun by petition. Annexation may be made and brought under the jurisdiction of the board for all of said purposes upon the petition of the owners of all the lands to be annexed.

Sec. 106. Subsequent proceedings - use of former surveys. In cases where proceedings have been taken for the establishment of a levee or drainage district and an engineer has been appointed who has made a survey, return and plat thereof and for any reason the improvement has been abandoned and the proceedings dismissed, and afterwards proceedings are instituted for the establishment of a levee or drainage district which will benefit any territory surveyed in said former proceedings, the engineer shall use so much of the return, levels, surveys, plat and profile made in the former proceedings as may be applicable. He shall specify in his reports the parts thereof so used, and in case the cost of said returns, levels, surveys, plat, and profile made in said former proceedings has been paid by the former petitioners or their bondsmen, then a reasonable amount shall be allowed said petitioners or bondsmen for the use of the same.

Sec. 108. Reestablishment where former proceedings failed. When proceedings have been instituted for the establishment of a drainage district or for any change or repair thereof, or the change of a natural watercourse, and the establishment thereof has failed for any reason either before or after the improvement is completed, the board shall have power to reestablish such district or improvement and any new improvement in connection therewith as recommended by the report of the engineer. As to all lands benefited by such reestablishment, repair, or improvement, the board shall proceed in the same manner as in the establishment of an original district, using as a basis for assessment the entire cost of the proceedings, improvement, and maintenance from the beginning; but in awarding damages and in the assessment of benefits account shall be taken of the amount of damages and taxes, if any, theretofore paid by those benefited, and credit therefor given accordingly. All other proceedings shall be the same as for the original establishment of the district, making of improvements and assessment of benefits.

Sec. 109. New district including old district or improvements. If any levee or drainage district or improvement established either by legal proceedings or by private parties shall be insufficient to properly drain all of the lands tributary thereto, the board upon petition as for the establishment of an original levee or drainage district, shall have power to establish a new district covering and including such old district or improvement together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein.

Sec. 110. Credit allowed for old improvement. When such district as contemplated in the preceding section and the new improvement therein shall include the whole or any part of the former improvement, the commissioners, for classification of lands for assessment of benefits and apportionment of costs and expenses of such new improvement, shall take into consideration the value of such old improvement in the construction of the new one and allow proper credit therefor to the parties owning the old improvement as their interests may appear. In all other respects the same proceedings shall obtain as are provided for the original establishment of levee and drainage districts.

Sec. 116. Control - repair - apportionment. When any levee or drainage district shall have been established and the improvement constructed the same shall be at all times under the supervision of the board of supervisors except as otherwise provided for control and management by a board of trustees, and it shall be the duty of the board to keep the same in repair and for that purpose it may cause the ditches, drains, and watercourses thereof to be enlarged, reopened, deepened, widened, straightened or lengthened, or the location changed for better service, or may cause any part thereof to be converted into a closed drain when considered for the best interest of the public. Such repairs shall be paid for out of the funds of the levee or drainage district in the hands of the county treasurer if there be any.

If such funds are not sufficient and the cost thereof does not exceed ten per cent of the original cost of the improvements in the district a new assessment shall be made on the basis of the old apportionment and no notice of such assessment shall be necessary.

If the cost thereof does exceed ten per cent of the original cost of the improvements in the district, the board may for good reason order a new apportionment of, and assessment upon, the lands in the district to be made; and the same proceedings shall be had and the same rules shall be applied as are provided in this act for an original apportionment and assessment; and the same right to appeal shall be given to any interested party.

If additional land is required in making such repairs or changes then the same proceedings shall be had as to such additional land as are provided in this act for the original establishment of the district and the same rights shall be given all interested parties including the right of appeal from the decision of the board concerning any inclusion of land, damages, apportionment of benefits and assessment for costs.

Sec. 116-a2. But notwithstanding the provisions of the last preceding section so much of the cost of the work and materials as is required to clean out any specific open ditch or main so as to restore it to its original efficiency or capacity and to preserve its sides at a practical slope must be assessed to the lands in the whole district in the same proportion as the costs and expenses of the construction of such specific open ditch was originally assessed to said lands; and so much of the cost of the work and materials as is required to restore any tile line or lateral to its original efficiency, or to clean any tile line, or to replace broken or defective tile, or to rebuild any bulk head, must be assessed to the lands benefited by such specific tile line or lateral in the same proportion as the original cost thereof.

If, however, it shall appear that the original assessment or apportionment did not designate separately the amount each tract should pay for the main ditch or drain and the amount it should pay for the lateral drain, then the board shall make such reclassification whenever a new assessment is necessary for repairs or changes according to the principles and rules set forth in section forty and forty-one of this act.

Sec. 116-a3. Improvement of common outlet. When two or more drainage districts outlet into the same ditch, drain, or natural watercourse and the board determines that it is necessary to clean out, deepen, enlarge, extend, or straighten said ditch, drain, or natural watercourse in order to expeditiously carry off the combined waters of such districts, the board may proceed as provided in the last preceding section. Each district shall be assessed for the cost of such work in proportion to the benefits derived.

Sec. 116-a4. Commissioners to apportion district benefits. For the purpose of ascertaining the proportionate benefits, the board shall appoint commissioners having the qualifications of benefit commissioners, one of whom shall be an engineer, to determine the percentage of benefits and the sum total to be assessed to each district for the improvement.

Sec. 116-a5. Time of report. When said commissioners are appointed, the board shall, by proper order, fix the time when the commissioners shall report their findings, but a report filed within thirty (30) days of the time so fixed shall be deemed a compliance with said order.

Sec. 116-a6. Report and review thereof. The commissioners shall file with the board a detailed report of their findings. Said board shall review said report and may, by proper order, increase or decrease the amount which shall be charged to each district. If the amount finally charged against a district does not exceed ten per cent (10%) of the original cost of the improvement in said district, the board shall proceed to levy said amount against all lands, highways, and railroad rights of way and property within the district, in accordance with the original classification and apportionment. If the amount finally charged against a district exceeds ten per cent (10%) of the original cost of the improvement, the board shall order a reclassification as provided for the original classification of a district and upon the final adoption of the new classification and apportionment shall proceed to levy said amount upon all lands, highways and railway rights of way and property within the district, in accordance with said new classification and apportionment.

Sec. 117. Removal of obstructions. The board shall cause to be removed from the ditches, drains, and laterals of any district any obstructions which interfere with the flow of the water, including trees, hedges, or shrubbery and the roots thereof, and may cause any tile drain so obstructed to be relaid in concrete or any other adequate protection, such work to be paid for from the drainage funds of the district.

Sec. 119. Trees and hedges outside right of way. When it becomes necessary to destroy any trees or hedges outside the right of way of any ditch, lateral, or drain in order to prevent obstruction by the roots thereof, if the board and the owners of such trees or hedges can not agree upon the damage for the destruction thereof, the board may proceed to acquire the right to destroy and remove such trees or hedges by the same proceedings provided for acquiring right of way for said drainage improvement in the first instance.

Sec. 120. Outlet for lateral drains - specification. The owner of any premises assessed for the payment of the costs of location and construction of any ditch, drain, or watercourse as in this chapter provided, shall have the right to use the same as an outlet for lateral drains from his premises. The board of supervisors shall make specifications covering the manner in which such lateral drains shall be connected with the main ditches or other laterals and be maintained, and the owner shall follow such specifications in making and maintaining any such connection.

Sec. 122. Subdistricts in inter-county districts - repair - assessments. The board of supervisors of any county shall have jurisdiction to establish sub-drainage districts of lands included within a district extending into two (2) or more counties when the lands to compose such subdistricts lie wholly within such county, and to make improvements therein, repair and maintain the same, fix and levy assessments for the payment thereof, and the provisions of this section shall apply to all such drainage subdistricts, the lands of which lie wholly within one (1) county. The proceedings for all such purposes shall be the same as for the establishment, construction, and maintenance of the original levee or drainage district the lands of which lie wholly within one (1) county, so far as applicable, except that one or more persons may petition for a sub-district as provided in section 52 of this chapter.

Sec. 123. Drainage district by mutual agreement - presumption. The owners of lands may provide by mutual agreement in writing duly signed, acknowledged, and filed with the auditor for combined drainage of their lands by the location and establishment of a drainage district for such purposes and the construction of drains, ditches, and watercourses upon and through their said lands. Such drainage district shall be presumed to be conducive to the public welfare, health, convenience, or utility.

Sec. 124. What the agreement shall contain. Such agreement shall contain the following:

1. A description of the lands by congressional divisions, metes, and bounds, or other intelligible manner, together with the names of the owners of all said lands.
2. The location of the drains and ditches to be constructed, describing their sources and outlets and the courses thereof.
3. The character and extent of drainage improvement to be constructed.
4. The assessment of damages if any.
5. The classification of the lands included in such district, the amount of drainage taxes or special assessments to be levied upon and against the several tracts, and when the same shall be levied and paid.
6. Such other provisions as may be mutually agreed upon relating to establishment and maintenance of such joint and mutual drainage district.

Sec. 125. Board to establish. When such agreement is filed with the auditor he shall record it in the drainage record. The board shall at a regular, special, or adjourned session thereafter locate and establish a drainage district and locate the ditches, drains, and watercourses thereof as provided in said agreement, and enter of record an order accordingly. The board thereafter shall carry out the object, purpose, and intent of such agreement and cause to be completed and constructed the said improvement and shall retain jurisdiction of the same as fully as in districts established in any other manner. It shall cause to be levied upon and against the lands of such district, the drainage taxes and assessments according to said agreement and when collected said taxes and assessments shall constitute the drainage funds of said district to be applied upon order of the board as in said agreement provided.

Sec. 127. Establishment - board to proceed. The board shall proceed to carry out the provisions of the agreement, advertising for and receiving bids, letting the work, making contracts, levying assessments, paying on estimates, issuing warrants, improvement certificates or drainage bonds as the case may be, in the same manner as in districts established on petition, except as in said mutual agreement otherwise provided.

Sec. 128. Outlet in adjoining county. When a drainage district is established in any county in the state and no practicable outlet can be obtained except through lands in an adjoining county, the board of the county in which the district is located shall have power to purchase a right of way for such outlet in such adjoining county and pay for the same out of the funds of such district. In case the board and the owners of the land required for such outlet cannot agree upon the price to be paid as compensation for the land taken, such board is hereby empowered to exercise the right of eminent domain in order to procure such necessary right of way.

Sec. 129. Outlet in another state - right of way. When a district is established in any county in this state and no practicable outlet can be obtained except through lands in an adjoining state, the board of supervisors of such county shall have power to purchase a right of way for such outlet in such adjoining state and pay for the same out of the funds of such district.

Sec. 130. Injuring or obstructing drainage improvements - damages. Any person who shall willfully break down or through or injure any levee or who shall dam up, divert, obstruct, or willfully injure any ditch, drain, or other drainage improvement authorized by law shall be liable to the person or persons owning or possessing the lands for which such improvements were constructed in double the amount of damages sustained by such owner or person in possession; and in case of a subsequent offense by the same person he shall be liable in treble the amount of such damages.

Sec. 131. Obstructing or damaging - penalty. Any person or persons willfully diverting, obstructing, impeding, or filling up, without legal authority, any ditch, drain, or watercourse or breaking down or injuring any levee established, constructed, and maintained under any provision of law shall be deemed guilty of a misdemeanor and punished accordingly.

Sec. 132. Obstruction - nuisance - abatement. Any ditch, drain, or watercourse which is now or hereafter may be constructed so as to prevent the surface and overflow water from the adjacent lands from entering and draining into and through the same is hereby declared a nuisance and may be abated as such.

Sec. 133. Drainage record. The board shall provide a drainage record book, which shall be in the custody of the auditor, who shall keep a full and complete record therein of all proceedings relating to drainage districts, so arranged and indexed as to enable any proceedings relative to any particular district to be examined readily.

Sec. 134. Preliminary expenses - how paid. If the proposed district is all in one (1) county, the board of supervisors is authorized to pay all necessary preliminary expenses in connection therewith from the general fund of the county. If it extends into other counties, the boards of the respective counties are authorized to pay from the general fund thereof, such proportion of said expenses as the work done or expenses created in each county bears to the whole amount of work done or expenses created. Said amounts shall be ascertained and reported by the engineer in charge of the work and be approved by the respective boards which shall, as soon as paid, charge the amount to said district in favor of the general fund of the counties, as their interest may appear, as soon as the said district is established. If said district shall not be established, the said amounts shall be collected upon the bond or bonds of the petitioners.

Sec. 135. Additional help in offices of auditor. If the work in the office of the auditor by reason of the existence of drainage districts is so increased that the regular officer is unable by diligence to do the same, the board of supervisors may employ such additional help as may be necessary to keep the records and transact the business of the drainage districts. The expense of such help shall be paid by the districts in proportion to the amount of work done therefor.

Sec. 136. Employment of counsel. The board is authorized to employ counsel to advise and represent it and drainage districts in any matter in which they are interested. Attorneys' fees and expenses shall be paid out of the drainage fund of the district for which the services are rendered, or may be apportioned equitably among two (2) or more districts. Such attorneys shall be allowed reasonable compensation for their services, also necessary traveling expenses while engaged in such business. Attorneys rendering such services shall file with the auditor an itemized, verified account of all claims therefor, and statement of expenses, and the same shall be audited and allowed by the board in the amount found to be due.

Sec. 138. Compensation of persons to assess. Persons appointed to appraise and award damages and make classification of lands and assess benefits, other than the engineer, shall receive such compensation as the board may fix, not to exceed, however, five dollars (\$5.00) per day each, and in addition thereto, the necessary expense of transportation of said persons while engaged upon their work. They shall file with the auditor an itemized, verified account of the amount of time employed upon said work and their expenses.

Sec. 139. Fees for publication of notice. Fees for publication of all notices required to be published by the provisions of this chapter shall be fixed by the board not exceeding thirty-three and one-third cents (33 1/3c) for each insertion for each ten (10) lines of brevier type or its equivalent.

Sec. 140. Payment of compensation - fees - expenses. All compensation for services rendered, fees, costs, and expenses when properly shown by itemized and verified statement shall be filed with the auditor and allowed by the board in such amounts as shall be just and true, and when so allowed shall be paid on order of the board from the levee or drainage funds of the district for which such services were rendered or expenses incurred, by warrants drawn on the treasurer by the auditor.

Sec. 141. Power to purchase at tax sale. When land in a levee, drainage, or improvement district is being sold at a tax sale for delinquent taxes or assessment, the board of supervisors or the district trustees, as the case may be, shall have authority to bid in such land or any part of it, paying the amount of the bid from the funds of the district, and taking the certificate of sale in their names as trustees for such district, and may thereafter pay any assessments for taxes or benefits levied against said premises from the district funds. The amount paid for redemption which shall include such additional payments, shall be credited to the district. If no redemption shall be made the board of supervisors or trustees, as the case may be, shall receive the tax deed as trustees for the district. They shall credit the district with all income from said property. They may lease or sell and convey said property as trustees for such district and shall deposit all money received therefrom to the credit of such district.

In case any proposition arises in said district to be determined by the vote of parties owning land therein, notice of such hearing shall be given and the board of supervisors or trustees, as the case may be, while holding title in trust to any such land, shall have the same right to vote for or against such proposition as the former owner would have had if he had not been divested of the title to said land.

Sec. 142. Inspection of drainage and levee improvements. The board of any county into which a levee or drainage improvement extends shall cause a competent engineer to inspect such levee or drainage improvement as often as it deems necessary for the proper maintenance and efficient service thereof. The engineer shall make report to the board of the condition of the improvement, together with such recommendations as he deems necessary. For any claim for services and expenses of inspection, the engineer shall file with the auditor an itemized and verified account of such service and expense to be allowed by the board in such amount as it shall find due and paid out of the drainage funds of the district. If the district extends into two (2) or more counties, such action shall be had jointly by the several boards, and the expenses equitably apportioned among the lands in the different counties.

Sec. 143. Watchmen. When a levee has been established and constructed in any county, the board shall be empowered to employ one (1) or more watchmen, and fix their compensation, whose duty it shall be to watch such levee and make repairs thereon in case of emergency. Such employee shall file with the auditor an itemized verified account for services rendered, and cost and expense incurred in watching or repairing such levee, and the same shall be audited and allowed by the board as other claims and paid by the county from funds belonging to such district.

Sec. 144. Liberal construction of drainage laws. The provisions of this chapter and all other laws for the drainage and protection from overflow of agricultural or overflow lands shall be liberally construed to promote leveeing, ditching, draining, and reclamation of wet, swampy, and overflow lands. The collection of drainage taxes and assessments shall not be defeated where the board has acquired jurisdiction of the interested parties and the subject matter, on account of technical defects and irregularities in the proceedings occurring prior to the order of the board locating and establishing the district and the improvements therein. The final order establishing such district when not appealed from, shall be conclusive that all prior proceedings were regular and according to law.

## CHAPTER 2

### INTER-COUNTY LEVEE OR DRAINAGE DISTRICTS

Sec. 146. Establishment through two or more counties. When the levee or drainage district embraces land in two (2) or more counties, a duplicate of the petition of any owner of land to be affected or benefited by such improvement shall be filed with the county auditor of each county into which said levee or drainage district will extend, accompanied by a duplicate bond to be filed with the auditor of each of the said counties as provided when the district is wholly within one (1) county, in an amount and with sureties approved by the auditor of the county in which the largest acreage of the district is situated, which bond shall run in favor of the several counties in which it is filed.

Sec. 147. Commissioners to investigate and report. Upon the filing of such petition in each county and the approval of such duplicate bond by the proper auditor, the board of each of such counties shall appoint a commissioner and the commissioners of the several counties so appointed shall meet within thirty (30) days thereafter and appoint a competent engineer who shall also act as a commissioner. The commissioners thus appointed shall examine the application and make an inspection of all the lands embraced in the proposed district and shall determine what improvements in the way of levees, ditches, drains, or change of natural watercourses are necessary for the drainage of the lands described in the petition. Such commissioners including the engineer shall file

a detailed report of their examination and their findings and file a duplicate thereof in the office of the auditor of each of said counties.

Sec. 148. Duty of engineer. In addition to the report of the commissioners as a whole, the engineer appointed, shall perform the same duties and in the same manner required of the engineer by chapter one (1) of this act when the proposed district is located wholly within one (1) county, and his surveys, plats, profiles, field notes, and reports of his surveys shall be made and filed in duplicate in each county.

Sec. 149. Notice of hearing. Immediately upon the filing of the report of the commissioners and the engineer, if the same recommends the establishment of such district, notice shall be given by the auditor of each county to the owners of all the lots and tracts of land in his own county respectively embraced within such district as recommended by the commissioners as shown by the transfer books in the office of the auditor of each of said counties and also to the persons in actual occupancy of all the lots or tracts of land in such district, and also to each lienholder or incumbrancer of any of such lots or tracts as shown by the records of the respective counties. Such notice shall state the time and place, when and where the boards of the several counties will meet in joint session for the consideration of said petition and the report of the commissioners and engineer thereon, and shall in other respects be the same and served in the same time and manner as required when the district is wholly within one county, except that the auditor of each county shall give notice only to the owners, occupants, incumbrancers, and lienholders of the lots and tracts of land embraced within the proposed district in his own county as shown by the records of such county.

Sec. 150. Claims for damages and compensation - where filed. Any person filing objections or claiming damages or compensation on account of the construction of such improvement shall file the same in writing in the office of the auditor of the county in which his land is situated, at or before the time set for hearing. He may, however, file it at the time and place of hearing. If he shall fail to file such claim at the time specified he shall be held to have waived his right thereto, but claims for land taken for right of way for any open ditch need not be filed.

Sec. 151. Hearing - appraisers to appraise damages. At the time set for hearing such petition, the board of the several counties shall meet at the place designated in said notice. They shall organize by electing a chairman and a secretary, and when deemed advisable may adjourn to meet at the call of such chairman at such time and place as he may designate, or may adjourn to a time and place fixed by said joint boards. They shall sit jointly in considering the petition, the report and the recommendations of the engineer, in the same manner as if the district were wholly within one (1) county. The said boards by their joint action may dismiss the petition and refuse to establish such district, or they may approve and tentatively adopt the plans and recommendations of the engineer for the said district. If the said boards shall adopt a tentative plan for the district, the board of each county shall select an appraiser and the several boards by joint action shall employ an engineer, and the said appraisers and engineer shall constitute the appraisers to appraise the damages and value of all right of way required for open ditches. The appraisers shall proceed in the same manner and make return of their findings and appraisement the same as when the district is wholly within one (1) county, except that a duplicate thereof shall be filed in the auditor's office of each of the several counties. After the filing of the report of the appraisers, all further proceedings shall be the same as where the district is wholly within one (1) county, except as otherwise provided.

Sec. 152. Times and places for meetings of joint boards. The board of supervisors of any county in which a petition for the establishment of a levee or drainage district to extend into or through two (2) or more counties is on file, may meet with the board or boards of any other county or counties in which such petition is on file, for the purpose of acting jointly with such other board or boards in reference to said petition or any business relating to such district. Any such joint meetings held in either of the counties in which such petition is on file shall constitute a valid and legal meeting of said joint boards for the transaction of any business pertaining to said petition or to the business of such district.

Sec. 153. Equalizing voting power of boards. When the boards are of unequal membership, for the purpose of equalizing their voting power each member of the smallest board shall cast a full vote and each member of a larger board shall cast such fractional part of a vote as results from dividing the smallest number by such larger number.

Sec. 154. Commissioners to classify and assess. If the boards of the several counties acting jointly shall establish the district, they shall appoint a commission consisting of one (1) from each county, and in addition thereto a competent engineer who shall within twenty (20) days begin to inspect the premises and classify the lands in said district fixing the percentages and assessments of benefits and the apportionment of costs and expenses and shall complete said work within the time fixed by the boards. The qualifications of said commissioners, their classification of lands, fixing percentages and assessments of benefits and apportionment of costs and the report thereof in all details shall be governed in all respects by the provisions of chapter one (1) of this act for districts wholly within one (1) county.

Sec. 155. Joint hearing of boards - notices. Upon the filing of the report of the commissioners to classify lands, fix and assess benefits and apportion costs and expenses, the auditors of the several counties, acting jointly, shall cause notice to be served upon all interested parties of the time when and the place where the boards will meet and consider such report and make a final assessment of benefits and apportionment of costs, which notice shall be the same and served for the time and in the manner and all proceedings thereon shall be the same as provided in chapter one (1) of this act in districts wholly within one (1) county, except publication of notice as provided in section seventeen (17) shall be in each of the counties into which the district extends, and also except that the objections not filed prior to the date of the hearing shall be filed with the boards at the time and place of such hearing.

Sec. 156. Boards to levy in respective counties - improvement certificates - bonds. After the amount to be assessed and levied against the several tracts of land shall have been finally determined, the several boards, acting separately, and within their own counties, shall levy and collect the taxes apportioned and levied in their respective counties. They may issue warrants, improvement certificates, or bonds for the payment of the cost of such improvement within their respective counties, with the same right of land owners to pay without interest or in installments all as provided where the district is wholly within one (1) county.

Sec. 157. Time bonds or proceeds available. When drainage bonds are to be issued under the provisions of the preceding section they shall be issued at such time that they or the proceeds thereof shall be available for the use of the district at a date not later than ninety (90) days after the actual commencement of the work on the improvement as provided in relation to districts wholly within one county, and subject to the same exceptions in cases of appeals set forth in section 65 hereof.

Sec. 158. Supervising engineer. At the time of finally establishing the district, the boards of the several counties, acting jointly, shall employ a competent engineer to have charge and supervision of the construction of the improvement and they shall fix his compensation and he shall, before entering upon said work, give a bond running to the several counties for the use and benefit of the district in the same amounts and of like tenor and effect as is provided in districts wholly within one (1) county. A duplicate of such bond shall be filed with the auditor of each of said counties.

Sec. 159. Duty of engineer. The duties of the supervising engineer shall be the same in all respects as is provided by chapter one (1) of this act for districts wholly within one (1) county.

Sec. 160. Letting work. If the boards, acting jointly, shall establish such district, the auditors of the several counties shall immediately thereafter, acting jointly, cause notice to be given of the time and place of the meeting of the boards for letting contracts for the construction of the improvement. The notices, bids, bonds, and all other proceedings in relation to letting contracts shall be the same as provided where the district is wholly within one (1) county, but duplicates of contractors' bonds shall be filed with the auditor of each county.

Sec. 161. Contracts. All contracts made for engineering work and the work of constructing improvements of an inter-county district shall be made by written contract executed by the contractor and such person as may be authorized by the boards of the several counties and by joint resolution and shall specify the work to be done, the amount of compensation therefor and the times and manner of payment, all as provided in relation to districts wholly within one (1) county.

Sec. 162. Monthly estimate - payment - final settlement. The engineer in charge of the work shall furnish the contractor monthly estimates of the amount of work done on each section and the amount thereof done in each county, a duplicate of which shall be filed with the auditor of each of the several counties. Upon the filing of each statement, each auditor shall draw a warrant for the contractor or give him an order directing the treasurer to deliver to him improvement certificates or drainage bonds, as the case may be, in favor of the contractor for eighty per cent (80%) of the amount due from his county.

Sec. 163. Completion of work - final settlement. When the work to be done on any contract is completed to the satisfaction of the supervising engineer he shall so report and certify to the boards of the several counties, which by joint action shall fix a day to consider said report, and all the provisions shall apply in relation to objections to said report and the approval of the same and the completion of any unfinished or abandoned work as is provided in chapter one (1) of this act relating to completion of work and final settlement in districts wholly within one (1) county, except that, when the completed work is accepted by the joint action of the boards of supervisors of the several counties into which the district extends such acceptance shall be certified to the auditor of each county who shall draw a warrant for the contractor or give him an order directing the treasurer to deliver to him, improvement certificates, or drainage bonds, as the case may be, for the balance due from the portion of the district in such county.

Sec. 164. District court to establish - when. When the establishment of a district, extending into two (2) or more counties, is petitioned for as hereinbefore provided and one (1) or more of such boards fails to take action thereon, the petitioner may cause notice in writing to be served upon the chairman of each board demanding that action be taken upon the petition within twenty (20) days from and after the service of such notice.

Sec. 165. Transfer to district court - notice. If such boards shall fail to take action thereon within the time named, or fail to agree, the petitioners may cause such proceedings to be transferred to the district court of any of the counties into which such proposed district extends by serving notice upon the auditors of the several counties within ten (10) days after the expiration of said twenty (20) days' notice, or after the failure of such boards to agree.

Sec. 166. Transfer to district court - transcript - how tried. Upon the giving of such notice the auditors shall, acting jointly, prepare and certify to the clerk of the district court a full and complete transcript of all proceedings had in such case, on or before the first day of the next succeeding term of said court. The clerk of the district court shall thereupon docket the case and the same shall be tried as in equity and the appearance term shall be the trial term. The court shall enter judgment and decree dismissing the case or establishing such district and may by proper orders and writs enforce the same.

Sec. 167. Law applicable. Except as in this chapter otherwise stipulated the provisions and procedure set forth in chapter one of this act shall govern and apply to the formation, establishment and conduct of every levee or drainage district extending into two or more counties, the petition therefor, the giving or publication or service of notice therein, the appointment and duties of all officers or appraisers or commissioners, the making or filing of waivers, reports, plats, profiles, recommendations, notices, contracts and papers, the classification and apportionment and assessment of lands and all other property, the taking and hearing of appeals, the issuance and delivery of warrants, bonds and assessment certificates, the payment of taxes and assessments, the making of improvements, ditches, drains, changes, enlargements, extensions and repairs, the inclusion of lands, and the making or performance of every other matter or thing whatsoever relevant to or in any wise connected with such joint drainage or levee district and the rights, privileges and duties of all persons, land owners, officers, appellants and courts.

Sec. 167-a1. The land owner may have any beneficial use of the land to which he has fee title and which is occupied by the waste banks of an open ditch when such use does not interfere in any way with the easement or rights of the drainage district as contemplated by this act. For the purpose of gaining such use the land owner may smooth said waste banks but in doing so he must preserve the terms of such open ditch without depositing any additional dirt upon them.

### CHAPTER 3

#### DRAINAGE DISTRICT EMBRACING PART OR WHOLE OF CITY OR TOWN.

Section 168. Cities and towns included - notice. The board of any county shall have the same power to establish a drainage district that includes the whole or any part of any incorporated town or city, including cities under special charter, as they have to establish districts wholly outside of such cities and towns, including assessment of damages and benefits within such cities and towns, but no board of supervisors shall have power or authority to establish a drainage or levee district which lies wholly within the corporate limits of any city or town, nor in any case to establish any district for sewer purposes. Notice of the filing of the petition for such district and the time of hearing thereon, shall set forth the boundaries of the territory included within such city or town and directed to the town or city clerk and the owners and lienholders of the property within such boundaries without naming individuals, to be served in the same manner as notices where the district is wholly outside of such city or town.

Sec. 169. Assessments in cities and towns. When the streets, alleys, public ways, or parks or lots or parcels including railroad rights of way of any incorporated town or city, or city under special charter, so included within a levee or drainage district, will be beneficially affected by the construction of any improvement in such district, it shall be the duty of the commissioners appointed to classify and assess benefits to estimate and return in their report the percentage and assessment of benefits to such streets, alleys, public ways, and parks, or lots or parcels including railroad rights of way and notice thereof shall be served upon the clerk of such incorporated town or city irrespective of the form of government and upon owner of lots, parcels and railroad rights of way so assessed.

Sec. 170. Objections to assessments in cities and towns. The council or clerk of such town or city or individual owners may file objections to such percentage and assessment of benefits in the time and manner provided in case of landowners, outside such city or town, and they shall have the same right to appeal from the finding of the board with reference to such assessment. Such assessment as finally made shall draw interest at the same rate and from the same time as assessment against lands, and the board of supervisors and the town or city council shall have the same power in reference to issuing improvement certificates or drainage bonds and executing waivers on account of such assessment for benefits to streets, alleys, public ways, and parks as is herein conferred upon the board of supervisors and the township trustees in reference to assessment for benefits highways, and such cities or towns may issue their funding bonds for the purpose of securing money to pay any assessment against it as provided by law.

Sec. 172. Board of supervisors may relinquish to city or town - conditions. When the board of any county has heretofore established any drainage district which is located wholly within the corporate limits of any city or town, including those the outlets of which are outside of such limits, and the drains thereof have been wholly or partially constructed of sewer tile, or when the ground that is used for said drains is needed by the city or town for storm sewer and drainage purposes, said board shall relinquish all authority or control of all of said drain that is included within such corporate limits, to the city or town upon request of the city or town council as provided in the next section.

Sec. 173. Duty of council. It is hereby made the duty of any city or town council, if it deems the same for the best interest of the said city or town, to pass, by a majority vote, a resolution requesting the board of supervisors to permit the city or town to take over and control the drains within its corporate limits which resolutions shall be certified to the board of supervisors of the county and filed by the auditor, who shall spread the same upon the records of the drainage district.

Sec. 174. Duty of supervisors. Upon the request of the city or town council, as provided in the preceding section, it shall be the duty of the board to pass a resolution and have the same made a part of its proceedings, relinquishing all authority and control of the drainage district which is within the corporate limits, to the said city or town.

Sec. 175. Jurisdiction of municipality. After the drainage district has been taken over by the city or town, it shall have complete control thereof, and may use the same for any purpose that said city or town through its

city or town council deems proper and necessary for the advancement of the city or town or its health or welfare, and the city or town shall be responsible for the maintenance and upkeep of said drainage district only from and after its relinquishment by the board of supervisors to the city or town.

## CHAPTER 3-A

### HIGHWAY DRAINAGE DISTRICTS.

Section 175-a1. Establishment of highway drainage district. Whenever, in the opinion of the board of supervisors, it is necessary to drain any part of any public highway under its jurisdiction, and any land abutting upon or adjacent thereto, it may proceed without petition or bond to establish a highway drainage district by proceeding in all other respects as provided in chapter one (1) of this act. When the board does not proceed on its own motion, it shall so proceed when petitioned by the board of township trustees as to any highway under the jurisdiction of said board of trustees. Such district, when established, shall have the powers granted to drainage and levee districts, and all parties interested shall have the same rights so far as applicable.

Sec. 175-a2. Manner of initiating without petition. When the board of supervisors determines on its own action to proceed to the establishment of a highway drainage district, it shall do so by the adoption of a resolution of necessity to be placed upon its records, in which it shall describe in a general way the portion of any highway or highways to be included in such district, together with the description of abutting or adjacent land and railroad rights of way to be included in such district and made subject to assessment for such improvement.

Sec. 175-a3. Engineer. The board shall appoint a competent engineer for the district. If the county engineer is appointed, he shall serve without additional compensation. In no case shall the county engineer act as a member of the assessment commission in a drainage district provided for in this chapter.

Sec. 175-a4. Engineer survey and report. The engineer shall make a survey of the proposed district and report the same to the board, being governed in all respects as provided by sections thirteen (13) and fourteen (14) of this act, and designate particularly any portion of the county road system, the primary road system or the township road system, or any portion of either and all of said systems, as well as all lands adjoining and adjacent thereto, including lands and rights of way of railway companies which in his judgment will be benefited by drainage of highways in such district, and which should be embraced within the boundaries of such district.

Sec. 175-a5. Commission. The commission for assessment of benefits and classifying the property assessed shall determine and report:

1. The separate amount which shall be paid by the county on account of the county road system and the primary road system.
2. The amounts which shall be paid by the township or townships on account of the township road system.
3. The amounts of which shall be assessed against the right of way or other real estate of each railway company within such district.
4. The amounts which shall be assessed against each forty acre tract or less within such district.

Sec. 175-a6. Advanced payments. The board on construction of such improvement may advance out of the county road fund that portion to be collected by special assessment, the amount so advanced to be replaced in said county funds as the first special assessments are collected. The board may in lieu of making such advancements, issue warrants to be known as "Drainage Warrants", said warrants to draw not to exceed 6% interest per annum payable annually from the date of issue and to be paid out of the special assessments levied therefor when the same are collected.

Sec. 175-a7. Payment from road funds. The amount fixed by the final order of the board to be paid on account of the primary road system shall be payable out of the primary road fund. The amount fixed by the final order of the board to be paid on account of the county road system may be payable out of the county road fund or out of the county drainage fund. The amount fixed by the final order of the board to be paid on account of the township road system shall be payable out of the township road fund or out of the township drainage fund.

Sec. 175-a8. Dismissal - costs. If such proceedings are dismissed or said improvement abandoned, all costs of such proceedings shall be paid out of the road system for the benefit of which said proceeding was initiated.

Sec. 175-a9. Condemnation of right of way. When in the judgment of the board of supervisors, it is inadvisable to establish a drainage district but necessary to acquire right of way through private lands for the construction of ditches or drains as outlets for the drainage of highways, the board of supervisors may cause such right of way to be condemned by proceedings in the manner required for the exercise of the right of eminent domain as for works of internal improvement, and apportion the costs and expenses thereof equitably among the several road systems benefited thereby, but no attorney's fees will be taxed.

Sec. 175-a10. Laws applicable. All proceedings for the construction and maintenance of highway drainage districts except as provided for in this chapter shall be as provided for in chapters one (1) and two (2) and three (3) of this act.

Sec. 175-a11. Removal of trees from highway. When the roots of trees located within a highway obstruct the ditches or tile drains of such highway, the board of supervisors or the board of township trustees, shall remove such trees from highways under their respective jurisdictions, except shade or ornamental trees adjacent to a dwelling house or other farm buildings or feed lots.

Sec. 175-a12. Trees outside of highways. When the roots of trees and hedges growing outside a highway obstruct the ditches or tile drains of any highway, the board of supervisors or the board of township trustees, as the case may be, may acquire the right to destroy such trees in the manner provided for taking private property for public use. Ornamental trees adjacent to any dwelling, orchard trees and trees used as windbreaks for a dwelling house, outbuildings, barn or feed lots, shall be exempt from the provisions of this section.

#### CHAPTER 4

#### DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS.

Section 176. Pumping stations. The board of supervisors of any county or counties in which a drainage or levee district has been organized as by law provided, may establish and maintain a pumping station or stations, when and where the same may be necessary to secure a proper outlet for the drainage of the land comprising the district or any portion thereof, and the cost of construction and maintenance of said pumping station or stations shall be levied upon and collected from the lands in the district benefited by such pumping station or stations, in the same manner as provided for in the construction and maintenance of said districts.

Sec. 177. Pumping stations - petition - procedure. Such pumping station shall not be established or maintained unless a petition therefor shall be presented to the board signed by not less than one-third ( $1/3$ ) of the owners of lands benefited thereby. The lands benefited by such pumping station shall be determined by the board on said petition and report of the engineer, and such other evidence as it may hear. No additional land shall be taken into any such drainage district after the improvements therein have been substantially completed, unless one-third ( $1/3$ ) of the owners of the land proposed to be annexed have petitioned therefor or consented in writing thereto.

Sec. 178. Additional pumping station - transfer of pumps - cost. After the establishment of a drainage district, including a pumping plant, and before the completion of the improvement therein, the board or boards may, if deemed necessary to fully accomplish the purposes of said improvement, by resolution authorize the establishment and maintenance of such additional pumping station or stations as the engineer may recommend, and if a petition is filed by one-third ( $1/3$ ) of the owners of land within such district asking the establishment of such pumping plant or plants, the board or boards must direct the engineer to investigate the advisability of the establishment thereof and upon the report of said engineers the board or boards shall determine whether such additional pumping plant or plants shall be established. If the board or boards determine that additional pumping plant or plants shall be established and maintained, a pump or pumps may be removed from any pumping station already established and may be installed in any such additional plant, if such removal can be made without injuring the efficient operation of the plant from which removed. The cost of the establishment of such additional pumping plant or plants shall be paid in the same manner and upon the same basis as is provided for the cost of the original improvement.

Sec. 179. Dividing districts with two or more pumping plants - petition - notice. When a drainage district has been created and more than one (1) pumping plant is established therein, the board or boards of supervisors may and upon petition of one third ( $1/3$ ) of the owners of land within said district shall appoint an engineer to investigate the advisability of dividing said district into two (2) or more districts so as to include at least one (1) pumping plant in each of such districts. If the engineer recommends such division the board of supervisors shall fix a time for hearing upon the question of such division and shall publish notice directed to all whom it may concern of the time and place of such hearing, for the time and in the manner as is required for the publication of notice of the establishment of said district, except that said notice need not name the owners and lienholders.

Sec. 180. Hearing - jurisdiction of divided districts. At the time fixed, the board shall determine the advisability of such division and shall make such order with reference thereto as shall be deemed proper, having consideration for the interest of all concerned. If such division is made, the board or boards having jurisdiction of the original district shall retain jurisdiction of the new districts created by such division for the purpose of collecting assessments theretofore made and making such additional assessments as are necessary to pay the obligations theretofore contracted. For all other

purposes, each division shall be under the jurisdiction of the board or boards of supervisors which would have had jurisdiction thereof if originally established as an independent district.

Sec. 181. District divided by streams and subdistricts. After a levee or drainage district operating a pumping plant shall have been established and the improvement constructed and accepted, if it shall become apparent that the lands can be more effectually drained, managed, or controlled by a division thereof, then the said board or boards, or trustees, may, and if the district is divided by a stream, they shall, divide the district.

Sec. 182. Assessments not affected - maintenance tax. Each district after the division shall be conducted as though established originally as a district. Nothing herein shall affect the legality or collection of any assessments levied before the division; but the maintenance tax, if any, shall be divided in proportion to the amount paid in by each district.

Sec. 183. Election and apportionment of trustees. If said district, before the division was made, was under the control and management of trustees, then each trustee shall continue to serve in the district in which he is situated, and other trustees shall be elected in each new district. The election for said new trustees shall be called by the old board of trustees in each district within ten (10) days after said division is made and shall be conducted as provided for the election of trustees.

Sec. 184. Overflow lands - settling basin - channel. If, before a district operating a pumping plant is completed and accepted, it appears that portions of the lands within said district are wet or nonproductive by reason of the floods or overflow waters from one (1) or more streams running into, through or along said district and that said district or some other district of which such district shall have formed a part, shall have provided a settling basin to care for the said floods and overflow waters of said stream or watercourse, but no channel to said settling basin has been provided, said board or boards are hereby empowered to lease, buy, or condemn the necessary lands within or without the district for such channel. Proceedings to condemn shall be as provided for the exercise of the right of eminent domain.

Sec. 184-a1. Funding bonds for district with pumping station - petition. When the owners of ten per cent (10%) of the land in a drainage or levee district having and operating a pumping station shall petition the board of supervisors to extend the time of payment of the taxes assessed against the lands within said district for a period not exceeding twenty (20) years, under such rules and regulations as said board may direct, the interest on such assessments to be paid annually the same as other taxes levied against the property, not less than one-twentieth of the principal of said extended tax to be paid each year until the entire tax is paid, and the lien of such tax to continue until fully paid, the board of supervisors may settle, adjust, renew or extend the legal indebtedness of such district as shown by the assessments levied against the lands therein whether evidenced by certificates, warrants, bonds or judgments by refunding all such indebtedness and issuing coupon bonds therefor when such indebtedness amounts to one thousand dollars (\$1,000.00) or upwards, but for no other purpose.

Sec. 184-a2. Form and denomination of bonds. Such bonds shall be issued in sums of not less than one hundred dollars or more than one thousand dollars each, running not more than twenty years, bearing interest not exceeding six per cent (6%) per annum, payable annually or semiannually, and shall be substantially in the form provided by law for funding bonds issued for drainage purposes.

Sec. 184-a3. Numbering and signing - interest coupons. Such bonds shall be numbered consecutively, signed by the chairman of the board of supervisors, attested by the county auditor. The interest coupons attached thereto shall be executed in the same manner.

Sec. 184-a4. Resolution - requisites - record. All bonds issued under the provisions of this chapter shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors, which shall specify the amount authorized to be issued, the purpose for which issued, the rate of interest they shall bear and whether payable annually or semiannually, the place where the principal and interest shall be payable and when it becomes due, and such other provisions not inconsistent with law in reference thereto as the board of supervisors shall think proper, which resolution shall be entered of record upon the minutes of the proceedings of the said board and a complete copy thereof printed on the back of each bond, which resolution shall constitute a contract between the drainage district and the purchasers or holders of said bonds.

Sec. 184-a5. Registration - certification - report. When bonds have been executed as aforesaid they shall be delivered to the county treasurer and his receipt taken therefor. He shall register the same in a book provided for that purpose, which shall show the number of each bond, its date, date of sale, amount, date of maturity and the name and address of the purchaser and if exchanged what evidences of debt were received therefor, which record shall at all times be open to the inspection of the owners of property within the district. The treasurer shall thereupon certify on the back of each bond as follows:

"This bond duly and properly registered in my office this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

\_\_\_\_\_  
Treasurer of the County of \_\_\_\_\_

The treasurer shall stand charged on his official bond with all bonds so delivered to him and the proceeds thereof. He shall report under oath to the board of supervisors, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by him since his last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged.

Sec. 184-a6. Sale - application of proceeds. He shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for a legal indebtedness of the said district evidenced by bonds, warrants, or judgments outstanding at the date of the passage of the resolution authorizing the issue thereof and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued at the date of sale or exchange. After registration the treasurer shall deliver said bonds to the purchaser thereof and when exchanged for indebtedness of said district shall at once cancel all warrants or bonds or secure proper credits therefor on judgments.

Sec. 184-a7. Levy required. Drainage districts issuing funding or refunding bonds under this chapter shall levy taxes for the payment of the principal and interest thereof, where there has not been a prior levy covering same, in accordance with the provisions of the law relating to taxation.

Sec. 184-a8. Scope of act. Refunding bonds for the purposes set out in this chapter may be issued to pay off and take up bonds issued in payment for drainage improvements under prior laws or to refund any part thereof. Bonds thus issued shall substantially conform to the provisions of the law relating to drainage bonds and the face amount thereof shall be limited to the amount of the unpaid assessments, with interest thereon, applicable to the payment of the bonds so taken up.

Sec. 184-a9. Funds available to pay bonds. When refunding bonds shall be issued to pay for drainage improvements under the provisions of this chapter, all special assessments, taxes and sinking funds applicable to the payment of such bonds previously issued shall be applicable in the same manner and the same extent to the payment of the refunding bonds issued hereunder, and all the powers and duties to levy and collect special assessments and taxes or create liens upon property shall continue until all refunding bonds shall be paid.

The drainage district shall collect the special assessment out of which the said bonds are payable and hold the same separate and apart in trust for the payment of said refunding bonds but the provisions of this chapter shall not apply to assessments or bonds adjudicated to be void.

Sec. 184-a10. Limitation of actions to question validity. No action shall be brought questioning the validity of any of the bonds authorized by this chapter from and after three months from the time the same are ordered issued by the proper authorities.

## CHAPTER 5

### MANAGEMENT OF DRAINAGE OR LEVEE DISTRICTS BY TRUSTEES.

Section 185. Management by trustees - proceedings. In the manner provided in this chapter, any drainage or levee district in which the original construction has been completed and paid for by bond issue, or otherwise, may be placed under the control and management of a board of three (3) trustees to be elected by the persons owning land in the district that has been assessed for benefits.

Sec. 186. Petition - election - judges and clerks. A petition shall be filed in the office of the auditor signed by a majority of the persons including corporations owning land within the district assessed for benefits.

The board, at the next regular, adjourned, or special session shall canvass the petition and if signed by the requisite number of landowners, it shall order an election to be held at some convenient place in the district not less than forty (40) nor more than sixty (60) days from the date of such order, for the election of three (3) trustees of such district. It shall appoint from the freeholders of the district who reside in the county or counties, three (3) judges and two (2) clerks of election.

Sec. 187. Inter-county district - petition - where filed. If the district extends into two (2) or more counties, a duplicate of the petition shall be filed in the office of the auditor of each county. The boards of supervisors shall, within thirty (30) days after the filing of such petition, meet in joint session and canvass the same, and if found to be signed by a majority of the owners of land in the district assessed for benefits, they shall by joint action order such election and appoint judges and clerks of election as provided in the preceding section.

Sec. 188. Subdistricts to secure proper distribution of trustees. When a petition has been filed for the election of trustees to manage a district containing 3,000 acres or more, the board, or, if the district extends into more than one (1) county, the boards of such counties by joint action, shall, before the election, divide the district into three (3) election districts for the purpose of securing a proper distribution of trustees in such district, and such division shall be so made that each election district will have substantially equal voting power and acreage, as nearly as may be. After such division is made there shall be elected one (1) trustee for each of said election districts, but at such election all the qualified voters for the entire district shall be entitled to vote for each trustee. The division here provided for shall be for the purposes only of a proper distribution of trustees in the district and shall not otherwise affect said district or its management and control.

Sec. 189. Record and plat of election districts. At the time of making a division into election districts, as provided in the preceding section, the board or boards shall designate by congressional divisions, subdivisions, metes and bounds, or other intelligible description, the lands embraced in each election district, and the auditor or auditors, if more than one (1) county shall make a plat thereof in the drainage record of the district indicating thereon the boundary lines of each election district, numbering them, one (1), two (2) and three (3), respectively.

Sec. 190. Eligibility of trustees. Each trustee shall be a citizen of the United States not less than twenty-one (21) years of age, a resident of the county and the owner of land in the election district for which he is elected.

Sec. 191. Notice of election. The board, or, if in more than one (1) county, the boards acting jointly, shall cause notice, of said election to be given, setting forth the time and place of holding the same and the hours when the polls will open and close. Such notice shall be published for two (2) consecutive weeks in a newspaper in which the official proceedings of the board are published in the county, or if the district extends into more than one (1) county, then in such newspaper of each county. The last of such publications shall not be less than ten (10) days before the date of said election.

Sec. 192. Assessment to determine right to vote. Before any election is held, the election board shall obtain from the county auditor or auditors a certified copy of so much of the record of the establishment of such district as will show the lands embraced therein, the assessment and classification of each tract and the name of the person against whom the same was assessed for benefits, and the present record owner, and such certified record shall be kept by the trustees after they are elected, for use in subsequent elections. They shall, preceding each subsequent election, procure from the county auditor or auditors additional certificates showing changes of title of land assessed for benefits and the names of the new owners.

Sec. 193. New owner entitled to vote. Anyone who has acquired ownership of assessed lands since the latest certificate from the auditor shall be entitled to vote at any election if he presents to the election board for its inspection at the time he demands the right to vote evidence showing he has title.

Sec. 194. Qualifications of voters. Each landowner over twenty-one (21) years of age without regard to sex and any railway or other corporation owning land in said district assessed for benefits shall be entitled to one (1) vote only, except as provided in the next section.

Sec. 195. When number of votes determined by assessment. When a petition asking for the right to vote in proportion to assessment of benefits at all elections for any purpose thereafter to be held within said district, signed by a majority of the landowners owning land within said district assessed for benefits, is filed with the board of trustees, then, in all elections of trustees thereafter held within said district, any person whose land is assessed for benefits without regard to age, sex, or condition shall be entitled to one (1) vote for each ten dollars (\$10.00) or fraction thereof of the original assessment for benefits against the land actually owned by him, in said district at the time of the election, but in order to have such ballot counted for more than one (1) vote the voter shall write his name upon the ballot. The vote of any resident of a county in which the district is located in whole or in part must be cast in person.

Sec. 196. Vote by agent - power of attorney. Any nonresident of the county or any corporation owning land or right of way lying wholly or in part within the district and assessed for benefits may have his or its vote cast by some resident taxpayer of the district or agent of such corporation when authorized by a power of attorney signed and acknowledged by such nonresident landowner or duly authorized officer of such corporation. Such power of attorney shall be filed with the auditor of the county where such election is held at least five (5) days prior to the election at which it is to be effective. Every such power of attorney shall specify the particular election for which it is to be used, indicating the day, month, and year of such election, and shall be void for all elections subsequently held.

Sec. 197. Vote of minor or insane. The vote of any person who is a minor, insane, or under other legal incompetency shall be cast by the parent, guardian, or other legal representative of such minor, insane, or other incompetent person and in order to be counted it shall be cast in person. The person casting such vote shall deliver to the judges and clerks of election a written sworn statement giving the name, age, and place of residence of such minor, insane, or other incompetent person, and any false statement knowingly made to secure permission to cast such vote shall render the party so making it guilty of the crime of perjury.

Sec. 198. Ballots for trustees. Each ballot for election of trustees shall have the name of each person voted for printed or legibly written thereon, and the number of the election district for which he is a candidate, and each qualified voter for the whole district shall be entitled to vote for one (1) candidate for each district for which a trustee is to be elected.

Sec. 199. Election - canvass of votes - returns. On the day designated for said election the polls shall open at eight (8) o'clock a.m. and remain open until seven (7) o'clock p.m. The judges of election shall canvass the vote and certify the result, and deposit with the auditor the ballots cast, together with the poll books showing the names of the voters; but if there is more than (1) county in the district, the returns shall be filed with the auditor of the county having the greatest acreage of said district.

Sec. 200. Canvass of returns by board. The canvass of the returns by the board or boards of supervisors shall be on the next Monday following said election and it or they shall make a return of the results of such canvass to the auditor, who shall issue certificates to the trustees elected, and when the district extends into more than one (1) county, then the auditor with whom the election returns were filed shall issue such certificates.

Sec. 201. Tenure of office. Except as provided in the next section, the trustees so elected shall hold office until the fourth Saturday in January next succeeding their election and until their successors are elected and qualified. On the third Saturday in the January next succeeding their original election, an election shall be held at which three (3) trustees shall be chosen, one (1) for one (1) year, one (1) for two (2) years, and one (1) for three (3) years, and each shall qualify and enter upon the duties of his office on the fourth Saturday of the same January. On the third Saturday in each succeeding January, an election shall be held to choose a successor to the trustees whose term is about to expire, and the term of his office shall be for three (3) years and until his successor has qualified.

Sec. 201-a1. Tenure of office in levee and pumping station districts. In a levee district or drainage district having a pumping station an election of trustees shall be held biennially on the third Saturday in January, at which election two trustees shall be elected for a term of three years, but the term of one shall begin one year from the fourth Saturday in January after his election. Ballots shall indicate which of said trustees is for the term beginning on the first Saturday after his election and which for the term beginning one year from such period. For the purpose of carrying out the provisions of this section the terms of trustees in any such districts shall expire on the fourth Saturday of January, 1925, and on the third Saturday of January, 1926, an election of trustees shall be held at which there shall be two trustees elected for two years, and one for three years, and thereafter biennially two trustees shall be elected with terms of office as first above provided.

Sec. 202. Division of districts under trustee management. In all districts already under trustee management, the board of trustees shall prior to the election of trustees in the year nineteen hundred twenty-five (1925) divide the district for which they are trustees, into election districts, and at the election for that and each succeeding year, when a trustee is to be elected, it shall be for a specified election district within such district.

Sec. 203. Elections - how conducted. After the first election of trustees, the trustees shall act as judges of election; the clerk of the board shall act as one (1) of the clerks; and some owner of land in the district shall be appointed by the board to act as another clerk. The trustee shall fill all vacancies in the election board. The result of each election shall be certified to the auditor or the several county auditors if the district is located in more than one county.

Sec. 204. Change of time - annual election. The date on which said annual election shall be held may be changed by the choice of a majority of electors of such district expressed by ballot at any such annual election, and the return of such vote shall be certified in the same manner as the returns for election of trustees.

Sec. 205. Vacancies. If any vacancy occurs in the membership of the board of trustees between the annual elections, the remaining members of the board shall have power to fill such vacancies by appointment of persons having the same qualifications as themselves. The persons so appointed shall qualify in the same manner and hold office until the next annual election when their successors shall be elected. In the event that all places on the board become vacant, then a new board shall be appointed by the auditor, or if more than one (1) county, then by the auditor of the county in which the greater acreage of the district is located. The persons so appointed shall hold office until the next annual election and until their successors are elected and qualified.

Sec. 206. Trustees - bonds. The trustees shall qualify by giving a bond in the sum of not less than one thousand dollars (\$1,000.00) or more than five thousand dollars (\$5,000.00) each, conditioned for the faithful discharge of their duties, said bond to be fixed and approved by the auditor of the county, and if more than one (1), then of the county in which the greater acreage of the district is located.

Sec. 207. Organization - selection of clerk. As soon as the trustees have qualified, they shall organize by electing one (1) of their own number as chairman and may select some other taxpayer of the district as clerk of the board who shall serve during the pleasure of the board of trustees.

Sec. 208. Power and duties of trustees - limitations. Trustees shall have control, supervision, and management of the district for which they are elected and shall be clothed with all of the powers now conferred on the board or boards of supervisors for the control, management, and supervision of drainage and levee districts under the laws of the state, unless otherwise specially provided. But such authority shall extend only to the district for which they are elected.

Sec. 209. Cost and expenses - collection and disbursement. All costs and expenses necessary to discharge the duties by this chapter conferred upon trustees shall be levied and collected as provided by law and such levee shall be upon certificate by the trustees to the board or boards of supervisors of the amount necessary for such levy. Drainage and levee taxes when so levied and collected shall be kept by the treasurer of the county in a separate fund to the credit of the district for which it is collected, shall be expended only upon the orders of trustees, signed by the president of the board, upon which warrants shall be drawn by the auditor upon the treasurer.

Sec. 210. Improvement certificates and bonds. The board of trustees of any district shall have the same power to issue improvement certificates and levee and drainage bonds under the same conditions and with like tenor and effect as is provided by chapter one (1) of this title for such issuance by the board of supervisors, except that in case of the issue of levee or drainage bonds, the same shall be approved by a judge of the district court in and for the county or counties in which such district lies, which approval shall be printed upon such bonds before the same are negotiated.

Sec. 211. Reclassification and other changes - election. If a reclassification of lands or a readjustment of the assessments of property or any important change of the district shall be deemed advisable by the said trustees, they shall submit such questions to the vote of the owners of land of said district assessed for benefits, by ballot, at the next regular election of trustees, or they shall have the power to call a special election therefor, with like notice as for regular elections which shall state the proposition to be submitted. Should the proposition receive the sanction of the majority of the voters at said election, then the trustees shall proceed in the same manner in the reclassification and readjustment of the assessments as is now provided for governing the actions of the board or boards of supervisors.

Sec. 212. Form of ballot for submitting proposition. For the purpose of any election under the preceding section, the trustees shall prepare the form of ballot to be used for such election and shall distinctly and separately state on each ballot the proposition to be submitted. If it is a question of reclassification and readjustment of assessments of the district, the ballot shall so state, and be arranged so that the voter may vote for or against said proposition. If the question is one of extensive improvements or important changes of the district, the form of ballot shall specify the extent and estimated cost of such improvements or changes, and be so arranged that each voter may vote for or against such proposition. Said ballot shall be separate from any

ballot for the election of trustees and when voted, such ballot shall be deposited in a separate box and be kept separate; and the returns of election shall be certified by the judges and clerks of election to the auditor, or if more than one (1) county, to each auditor, and the ballots deposited with the auditor of the county having the largest acreage of the district, and a record made thereof in the drainage record of said district.

Sec. 213. Trustees to report proceedings to auditor. Such trustees shall, from time to time, and with reasonable promptness, furnish the auditor of each county in which any part of said district is situated, with a correct report of their acts and proceedings, which report shall be signed by the chairman and the clerk of the board and shall be recorded by the auditor in the drainage record, and shall be published in one official paper in the county having a general circulation in the district.

Sec. 214. Compensation. The compensation of the trustees and the clerk of the board is hereby fixed at three dollars (\$3.00) per day and necessary expenses, to be paid out of the funds of the drainage or levee district for each day necessarily expended in the transaction of the business of the district, but no one shall draw compensation for services as trustee and as clerk at the same time. They shall file with the auditor or auditors, if more than one (1) county, itemized, verified statements of their time devoted to the business of the district and of the expenses incurred.

Sec. 215. Change from trustee to supervisor management. Any district which has been placed under the management of trustees may be placed back under the management of the board or boards of supervisors in the manner provided in the next section.

Sec. 216. Petition - requisites - canvass. For such purposes a petition signed by a majority of persons, including corporations owning land within the district assessed for benefits and who in the aggregate own more than one-half (1/2) the acreage of such lands, may be filed in the office of the auditor and if more than one (1) county, then a duplicate shall be filed in the office of the auditor of each county.

The trustees shall fix a date not less than ten (10) nor more than thirty (30) days from the date such petition is filed for the canvass of such petition, and the trustees and auditor or auditors shall canvass said petition and certify and record in the drainage record the result.

Sec. 217. No names to be withdrawn or added. Remonstrances signed by the same persons who are qualified to sign the petition may be filed in the office of the auditor and if the same persons petition and remonstrate they shall be counted on the remonstrance only. Such remonstrance shall be filed not less than five days before the time set for hearing.

Sec. 218. When change takes effect. If the result of the canvass shows a majority in favor of such change, then it shall become effectual on the date at which the next annual election of trustees would be held, and on such date the trustees shall surrender and turn over to the board or boards of supervisors the full and complete management and control of such district, together with all books, contracts and other documents relating thereto.

Sec. 219. Final report of trustees. On or before the date such change becomes effective, the said trustees shall make and file with the auditor, or if more than one (1) county, a duplicate with each auditor, a final report setting forth:

1. The amount of cash funds on hand or to the credit of the district.
2. The amount of outstanding indebtedness of the district, and the form thereof, whether in warrants, improvement certificates or bonds and the amount of each.
3. Any outstanding contracts for repairs or other work to be done.
4. A statement showing the condition of the improvements of the district, and specifying any portion thereof in need of repair.

Sec. 220. Duty of supervisors. After such change is made it shall be the duty of the board or boards of supervisors to manage and control the affairs of said district as fully and to the same extent as if it had never been under trustee management. They shall carry out any pending contracts lawfully made by the trustees as fully as if made by the board.

Sec. 220-al. Definition of terms.

1. Within the meaning of this act, the term "board" shall embrace the board of supervisors, the joint boards of supervisors in case of intercounty levee or drainage districts, and the board of trustees in case of a district under trustee management.
2. The term "commissioners" shall mean the men appointed and qualified to classify lands, fix percentages of benefits, apportion and assess costs and expenses in any levee or drainage district, unless otherwise specifically indicated by law.
3. The term "appraisers" shall mean the men appointed and qualified to ascertain the value of all land taken and the amount of damage arising from the construction of levee or drainage improvements.

CHAPTER 6

CERTAIN INDIVIDUAL DRAINAGE RIGHTS.

Sec. 221. Drainage through land of others-application. When the owner of any land shall desire to construct any levee, open ditch, tile, or other underground drain, for agricultural, sanitary, or mining purposes, or for the purpose of securing more complete drainage or a better outlet, across the lands of others, or across or through the right of way and roadbed of a railroad, and shall be unable to agree with the owner of any such lands, or with any such railroad company upon the terms upon which such rights may be obtained, he may file with the township clerk of the township in which any such land or right of way is situated, an application in writing, setting forth a description of the land or other property through which he is desirous of constructing any such levee, ditch or drain, the starting point, route, terminus, character, size and depth thereof.

Sec. 222. Notice of hearing-service. Upon the filing of any such application, the clerk shall forthwith fix a time and place for hearing thereon before the township trustees of his township, which hearing shall be not more than ninety (90) days nor less than thirty (30) days from the time of the filing of such application and cause notice in writing to be served upon the owner of each tract of land across which any such levee, ditch or drain is proposed to be located, as shown by the transfer books in the office of the county auditor, and also upon the person in actual occupancy of any such lands, of the pendency and prayer of such application, and the time and place set for hearing on the same before the township trustees, which notice as to residents of the county and railroad companies, shall be served not less than ten (10) days before the

time set for such hearing, in the manner that original notices are required to be served. Notice to a railroad company may be served upon any station agent.

Sec. 223. Service upon nonresident. In case any such owner is a nonresident of the county, such notice as to him shall be posted in three (3) public places within the township where his land is situated at least fifteen (15) days before the time set for such hearing, one (1) of which places shall be upon the land of which he is the owner.

Sec. 224. Service on omitted parties-adjourment. If at the hearing it should appear that any person entitled to notice has not been served with notice the trustees may postpone such hearing and fix a new time for the same, and notice of such new time of hearing may be served on such omitted persons in the manner and for the time provided by law and by fixing such new time for hearing and by adjourment to such time, the trustees shall not lose jurisdiction of the subject matter of such proceeding nor of any persons previously served with notice.

Sec. 225. Claims for damages or compensation-waiver. Any person or corporation claiming damages or compensation for or on account of the construction of any such improvement, shall file a claim in writing therefor with the township clerk at or before the time fixed for hearing on the application. A failure to file such claim at the time specified shall be deemed to be a waiver of the right to claim or recover such damage.

Sec. 226. Hearing-sufficiency of application-damages. At the time set for hearing on the application, if the trustees shall find that all necessary parties have been served with notice as required, they shall proceed to hear and determine the sufficiency of the application as to form and substance, which application may be amended both as to form and substance before final action thereon. They shall also determine the merits of the application, all objections thereto and all claims filed for damages or compensation, and may view the premises. The trustees may adjourn the proceedings from day to day, but no adjourment shall be for a longer period than ten (10) days.

Sec. 227. Shall locate when-specifications for. If the trustees find that the levee, ditch, or drain petitioned for will be beneficial for sanitary, agricultural, or mining purposes, they shall locate the same and fix the points of entrance and exit on such land or property, the course of the same through each tract of land, the size, character, and depth thereof, when and in what manner the same shall be constructed, how kept in repair, what connections may be made therewith, what compensation, if any, shall be made to the owners of such land or property or damages by reason of the construction of any such improvements, and any other question arising in connection therewith.

Sec. 228. Findings in writing- record. The trustees shall reduce their findings, decision, and determination to writing, which shall be filed with the clerk of such township, who shall record it in the official record of the trustees' proceedings, together with the application and all other papers filed in connection therewith, and he shall cause the findings and decision of the trustees to be recorded in the office of the recorder of the county in which such land is situated and said decision shall be final unless appealed from as provided in the next section.

Sec. 229. Appeal-notice. Either party may appeal to the district court from any such decision by causing to be served, within ten (10) days from the time it was filed with the clerk, a notice in writing upon the opposite party of the taking of such appeal, which notice shall be served in the same manner as is provided for the service of original notices. If the appellant is the party petitioning for the drain, he shall also file a bond, conditioned to pay all costs of appeal that may be assessed against him, which bond, if good and sufficient, shall be approved by the township clerk.

Sec. 230. Appeal-how tried-costs. The cause shall be tried in the district court by ordinary proceedings, upon such pleading as the court may direct, each party having the right to offer such testimony as shall be admissible under the rules of law. If the appellant does not recover a more favorable judgment in the district court than he received in the decision of the trustees, he shall pay all the costs of appeal.

Sec. 231. Parties-judgment-orders. The party claiming damages shall be the plaintiff and the applicant shall be the defendant; and the court shall render such judgment as shall be warranted by the verdict, the facts, and the law upon all the matters involved, and make such orders as will cause the same to be carried into effect.

Sec. 232. Transcript. In case of appeal, the township clerk shall certify to the district court a transcript of the proceedings before the trustees, which shall be filed in said court with the appeal bond, the party appealing paying for said transcript and the docketing of said appeal, as in other cases.

Sec. 233. Costs and damages-payment-construction. The applicant shall pay the costs of the trustees and clerk and for the serving of notices for hearing, the fees of witnesses summoned by the trustees on said hearing, and the recording of the finding of said trustees by the county recorder. Before entering on the construction of the drain, the party applying therefor shall pay to the party through whose land said drain is to be constructed the damages awarded to him, or shall pay the same to the trustees for his use. The applicant may proceed to construct said drain in accordance with the decision of the trustees, and the taking of an appeal shall not delay such work.

Sec. 234. Construction through railroad property-election-deposit-payment. If any such ditch or drain shall be located through or across the right of way or other land of a railroad company, the trustees shall determine the cost of constructing the same and the railroad company shall have the privilege of constructing such improvement through its property in accordance with the specifications made by the trustees and recover the cost thereof as fixed by the trustees. But such railroad company before it may exercise such privilege shall file its election to that effect with the township clerk within five (5) days after the decision of the trustees is filed, and in case such election is filed the applicant shall within ten (10) days thereafter pay to the township clerk, for the use of the railroad company, the cost of constructing the drainage improvement through its property, in addition to the amount that may be allowed as damages, and when the railroad company shall have completed the improvement through its property in accordance with such specifications it shall be entitled to demand and receive from the township clerk such cost.

Sec. 235. Failure of railroad to construct. If the railroad company shall fail to so construct the improvement for a period of thirty (30) days after filing its election so to do, the applicant may proceed to do so and may have returned to him the cost thereof deposited with the township clerk.

Sec. 236. Repairs-dispute, how determined. In case any dispute shall thereafter arise as to the repair of any such drain, the same shall be determined by said trustees upon application in substantially the same manner as in the original construction thereof.

Sec. 237. Penalty for obstructing. Any person who shall dam up, obstruct or in any way injure any ditch or drain so constructed, shall be liable to pay to the person owning or possessing the swamp, marsh, or other low lands, for the draining of which such ditch or ditches have been opened, double the damages that shall be sustained by the owner, and, in case of a second or subsequent offense by the same person, treble such damages.

Sec. 238. Connecting drains on boundary lines of abutting owners. When any watercourse or natural drainage line crosses the boundary line between two (2) adjoining landowners and both parties desire to drain their land along such watercourse or natural drainage line, but are unable to agree as to the junction of the lines of drainage at such boundary line, the township trustees of the township in which said land is located shall have full power and authority upon the application of either party to hear and determine all questions arising between such parties after giving due notice to each of the time and place of such hearing, and may render such decision thereon as to said trustees shall seem just and equitable.

Sec. 239. Boundary between two townships-proceedings. If any controversy referred to in the preceding section relates to a boundary line between adjoining owners which is also the boundary line between two (2) townships, then such controversy shall be determined by the joint action of the board of trustees in said two (2) adjoining townships, and all the proceedings shall be the same as provided in the preceding section except that it shall be by the joint action of the boards of trustees of said two (2) townships.

Sec. 240. Owners may drain in course of natural drainage. Owners of land may drain the same in the general course of natural drainage by constructing open or covered drains discharging the same in any natural watercourse or depression whereby the water will be carried into some other natural watercourse, and when such drainage is wholly upon the owner's land he shall not be liable in damages therefor. Nothing in this section shall in any manner be constructed to affect the rights or liabilities of proprietors in respect to running streams.

Sec. 241. Drainage connection with highway. When the course of natural drainage of any land runs to a public highway, the owner of such land shall have the right to enter upon such highway for the purpose of connecting his drain or ditch with any drain or ditch constructed along or across the said highway, but in making such connections, he shall do so in accordance with specifications furnished by the highway authorities having jurisdiction thereof, which specifications shall be furnished to him on application. He shall leave the highway in as good condition in every way as it was before the said work was done.

Sec. 242. Record of private drainage system. Any person who has provided a system of drainage on land owned by him may have the same made a matter of record in the office of the county recorder in which the drainage system is located as is hereinafter provided.

Sec. 243. Plat book record-form and requirements. The county recorder shall be provided with a loose leaf plat book, made to a scale not larger than sixteen inches to one mile, for each section of the land within the county in which such records shall be made. Such plat book shall consist of sheets of paper interbound by sheets of tracing cloth with proper heading, margin, and binding edge. Said plat book shall be used for keeping a record of drainage systems filed by any landowner. Plats shall be made or approved only by a registered engineer. Plats so offered for record shall be drawn to scale giving distances

in feet, indicate the size of tile used, length of mains, submains, and laterals, and location with regard to boundary lines of tract or government corners and subdivisions.

Sec. 244. Record book and index-contents-original plat in lieu of record. The county recorder shall also be provided with a record book and index referring to the plats provided for in the preceding section, and which may be used to give the owner's name, description of tracts of land drained, stating the time when drainage system was established, the kind, quality and brand of tile used, the name and place of manufacturing plant, the name of contractors who laid the tile, the name of the engineer in charge of the survey and installation, the cost of tile, delivery, installation, and engineering expense, depths, grades, outlets, connections, contracts for agreements with adjoining landowners as to connections, and any other matters or information that may be considered of value, all of said information to be furnished by the landowner or the engineer having charge of the installation of the same and certified to under oath, and shall be certified under oath by a registered engineer as being a true and accurate record. In lieu of making the record as herein provided any landowner may file with the county recorder the original plat used in the establishment of said drainage system, or a copy thereof, which shall be certified by the engineer having made the same.

Sec. 245. Record not part of title. The drainage records herein provided for shall not be construed as an essential part of the title to said lands, but may upon request be set out by abstractors as a part of the record title of said lands.

Sec. 246. Fees for record and copies. The county recorder shall be entitled to collect fees for the filing and information heretofore provided for, and for the making of copies of such records the same as is provided for other work of a similar nature.

## CHAPTER 7

### DRAINAGE DISTRICTS IN CONNECTION WITH UNITED STATES LEVEES.

Sec. 247. United States levees as part of district improvements-cooperation of board. In any case where the United States has built or shall build a levee along or near the bank of a navigable stream forming a part of the boundary of this state, the board of supervisors of any county through which the same may pass shall have the power to aid in procuring the right of way for and maintaining said levee, and providing a system of internal drainage made necessary or advisable by the construction thereof. Such improvement shall be presumed to be conducive to the public health, convenience, welfare, or utility.

Sec. 248. Manner in which board may cooperate with United States. Any United States government levee under the conditions mentioned in the preceding section may be taken into consideration by the board as a part of the plan of any levee or drainage district and improvements therein, and such board may, by agreement with the proper authorities of the United States government, provide for payment of such just and equitable portion of the costs of procuring the right of way and maintenance of such levee as shall be conducive to the public welfare, health, convenience or utility.

Sec. 249. Engineer to report specially. In the proceedings to establish such a district the engineer shall set forth in his report, separately from other items, the amount of the cost for the right of way of such levee, of constructing and maintaining the same; and if the plan is approved and the district finally established in connection with such levee, the board shall make a record of any such cooperative arrangement and may use such part of the funds of the district as may be necessary to pay the amount so agreed upon toward the right of way and maintenance of such levee.

Sec. 249-a1. Costs assessed. If said district is established, the entire costs and expenses incurred under this chapter shall be assessed against and collected from the lands lying within such district, by the levy of a rate upon the assessable value of the land within such district, sufficient to raise the required sum; provided that where the proposed improvement is for drainage only the board may, in their discretion, classify the land within such district and graduate the tax thereon, as provided in chapter one of this act.

Sec. 249-a2. Annual installments. If the proposed improvement is the maintenance of a levee, the amount collected in any one year shall not exceed fifty mills on the dollar of the assessment valuation, which said assessment shall be levied at a level rate on the assessable value of the said lands, easements and railroads within the district. If the amount necessary to pay for the improvement, exceed said sum, it shall be levied and collected in annual installments. For all other improvements, the board shall levy a rate sufficient to pay for the same, and may, at their discretion, make the same payable in annual installments of ten or less.

Sec. 249-a3. Collection of tax. The assessment required under the two preceding sections shall be made by the board of supervisors at the time of levying general taxes, after the work has been authorized, and the same shall be entered on the records of the board of supervisors, then entered on the tax books by the county auditor as drainage taxes, and shall be collected by the county treasurer at the same time, in the same manner, and with the same penalties, as general taxes; and if the same is not paid he shall sell all such lands upon which such assessment remains unpaid, at the same time, and in the same manner, as is now by law provided for the sale of lands for delinquent taxes, including all steps up to the execution and delivery of the tax deed for the same. The landowners shall take notice of and pay such assessments, without other or further notice than such as is provided for in this chapter. The funds realized from such assessments shall constitute the drainage fund, as contemplated in this chapter, and shall be disbursed on warrants drawn against that fund by the county auditor, on the order of the board of supervisors.

Sec. 249-a4. Cost of maintaining. The board of supervisors shall have the right and power to keep and maintain any such levee, ditches, drains, or system of drainage, either in whole or in part, established under the preceding sections of this chapter, as may in their judgment be required, and to levy the expense thereof upon the real estate within such drainage district as herein provided for, and collect and expend the same; provided, however, that no such work which shall impose a tax exceeding fifty mills on the dollar on the assessable value of the lands within the district shall be authorized by them, unless the same is first petitioned for and authorized in substantially the manner required by this chapter for the inauguration of new work.

Sec. 250. Laws applicable. In the establishment and maintenance of levee and drainage districts in cooperation with the United States as in this chapter provided, all the proceedings for said purpose in the filing and the form and substance of the petition, assessment of damages, appointment of an engineer, his surveys, plats, profiles and report, notice of hearings, filing of claims and objections, hearings thereon, appointment of commissioners to classify lands, assess benefits and apportion costs and expenses, report, notice and hearing thereon, the appointment of a supervising engineer, his duties, the letting of work and making contracts, payment for work, levy, and collection of drainage or levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial thereof and all other proceedings relating to such district shall be as provided in chapters one to six, inclusive, of this act, except as otherwise in this chapter provided.

## CHAPTER 8

### INTERSTATE DRAINAGE DISTRICTS.

Sec. 251. Interstate drainage-cooperation-procedure. When proceedings for the drainage of lands bordering upon the state line are had and the total cost of constructing the improvement in this state, including all damage, has been ascertained, and the engineer in charge, before the final establishment of the district, reports that the establishment and construction of such improvement ought to be jointly done with like proceedings for the drainage of lands in the same drainage area in such an adjoining state and that drainage proceedings are pending in such state for the drainage of such lands, the said authorities of this state may enter an order continuing the hearing on the establishment of such district to a fixed date, of which all parties shall take notice.

Sec. 252. Agreement as to costs. The board shall have power, when the total cost, including damages, of constructing the improvement in such other state has been ascertained by the authorities of such other state, to enter into an agreement as to the separate amounts which the property owners of each state should in equity pay toward the construction of the joint undertaking. When such amount is thus determined, the board or boards having jurisdiction in this state shall enter the same in the minutes of their proceedings and shall proceed therewith as though such amount to be paid by the portion of the district in this state had been originally determined by them as the cost of constructing the improvement in this state.

Sec. 253. Contracts let by joint agreement. When the bids for construction are opened, unless the construction work on each side of the line can go forward independently, no contract shall be let by the authorities in this state, unless the acceptance of a bid or bids for the construction of the whole project is first jointly agreed upon by the authorities of both states.

Sec. 254. Separate contracts - amount not to exceed benefits. The contract or contracts for the construction of that portion of the improvement within this state shall be entirely distinct and separate from the contract or contracts let by the authorities of the neighboring state; but the aggregate amount of the contract or contracts for the construction of the work within this state shall not exceed an amount equal to the amount of the benefits assessed in this state including damages and other expenses.

Sec. 255. Conditions precedent. No contract shall be let until the improvement shall be finally established in both states, and after the final adjustment in both states of damages and benefits. No bonds shall be issued until all litigation in both states arising out of said proceedings, has been finally terminated by actual trial or agreement, or the expiration of all right of appeal.

Sec. 256. Assessments, bonds and costs apply only to lands in state. All proceedings except as provided in this chapter in relation to the establishment, construction, and management of interstate drainage districts, shall be as provided for the establishment and construction of districts wholly within this state as provided in chapter one (1) of this title. All such proceedings shall relate only to the lands of such district which are located wholly within this state. But boards having jurisdiction in this state may make just and equitable agreements with like authorities in such adjoining state for the joint management, repair, and maintenance of the entire improvement, after the establishment and completed construction thereof.

## DRAINAGE OF COAL AND MINERAL LANDS AND MINES.

Sec. 257. Drainage of coal lands through lands of another. Any person or corporation owning or possessing any land underlaid with coal, who is unable to mine the same by reason of the accumulation of water in or upon it, may drain the same through, over or under the surface of land belonging to another person, and if such person or corporation and the owner of the land cannot agree as to the amount of damages that will be sustained by such owner, the parties may proceed to have the necessary right of way condemned and the damages assessed in the manner provided in the chapter on eminent domain.

Sec. 258. Drainage of lead or zinc-bearing lands or mines-compensation. Any person or corporation who by machinery, or by making drains or adit levels, or in any other way shall rid any lead or zinc-bearing lands or lead or zinc mines of water, thereby enabling the owners of mineral interests in said lands to make them productive and available for mining purposes, shall receive one-tenth ( $1/10$ ) of all the lead and zinc taken from said lands as compensation for said drainage.

Sec. 259. Setting apart compensation. The owners of the mineral interests in said lands, and persons mining upon and taking lead or zinc from said lands, shall jointly and severally set apart and deliver from time to time, when demanded, the said one-tenth ( $1/10$ ) of the mineral taken from said lands to the person or corporation entitled thereto, and the owners of the mineral interests therein shall allow the party entitled to such compensation and his agent of all times to descend into and examine said mines, and to enter any building occupied for mining purposes upon any of said lands and examine and weigh the mineral taken therefrom.

Sec. 260. Failure to pay compensation-penalty. Upon the failure or refusal of any owner of the mineral interests in said lands, or of any person taking the mineral therefrom to comply with the provisions of the preceding section, the person or corporation entitled to said compensation may recover the value of said mineral. If it shall appear that the defendant obstructed the plaintiff in the exercise of the right to examine such mines and to weigh such mineral, or concealed or secretly carried away any mineral taken from them, the court shall render judgment for double the amount proved to be due from such defendant.

Sec. 261. Notice to smelters-effect. The person or corporation entitled to said drainage compensation may at any time leave with any smelter of lead or zinc mineral in this state a written notice, stating that said person or corporation claims of the persons named in said notice the amount to which said person or corporation may be entitled, which notice shall have the effect of notices in garnishment, and also require the said smelter to retain, for the use of the person entitled thereto, the one-tenth ( $1/10$ ) part of the mineral taken from said land and received from the person named in said notice. The payment or delivery of the one-tenth ( $1/10$ ) part of the mineral taken from any of said lands by any of the persons whose duty it is hereby made to pay or deliver the same, shall discharge the parties liable jointly with him, except liability to contribute among themselves.

Sec. 262. Right of way for drainage of mineral lands. Any person or corporation engaged as aforesaid in draining such mines and lead or zinc bearing lands, when he or they shall find it necessary for the prosecution of their work, may procure the right of way upon, over or under the surface of such mineral lands, and the contiguous and neighboring lands, for the purpose of conveying the water from said mineral lands by troughs, pipes, ditches, water races or tunnels, and the right to construct and use shafts and air holes in and upon the same, doing as little injury as possible in making said improvements.

Sec. 263. Manner of procuring right of way. If the said person or corporation engaged in draining as aforesaid, and the owner of any land upon which said right of way may be deemed necessary, cannot agree as to the amount of damages which will be sustained by the owner by reason thereof, the parties may proceed to have the same assessed in the manner provided for the exercise of the right of eminent domain as provided in chapter five (5) of this title.

Sec. 264. Limitation of provisions. The foregoing provisions shall not be construed to require the owners of the mineral interest in any of said lands to take mineral therefrom, or to authorize any other person to take the mineral from said lands without the consent of the owners.

Sec. 265. Established districts, pending litigation, and other matters not affected. The amendment, revisions and codification of existing law contained in this act shall not affect litigation pending at the time this act goes into effect, or the validity of the establishment, construction or organization of any district then existing, the classification then existing of all lands, the assessment and levy of drainage taxes then made, existing contracts, and vested rights or any warrants, improvement certificates or drainage bonds outstanding or already provided for under prior existing laws.

Approved April 26, 1924.

#### CHAPTER 127

#### WATER POWER IMPROVEMENTS

#### S. F. 186

AN ACT to amend, revise, and codify chapter three (3) of title fifteen (15) of the compiled code of Iowa, relating to mill dams, races and water power improvements.

Be It Enacted by the General Assembly of the State of Iowa:

That chapter three (3) of title fifteen (15) of the compiled Code of Iowa is amended, revised, and codified to read as follows:

Section 1. No dam shall be constructed, maintained or operated in this state in any navigable or meandered stream for any purpose, or in any other stream for manufacturing or power purposes, nor shall any water be taken from such streams for industrial purposes, unless a permit has been granted by the executive council to the person, firm, corporation or municipality constructing, maintaining or operating the same.

Sec. 2. Any person, firm, corporation or municipality making application for a permit to construct, maintain or operate a dam in any of the waters, including canals, raceways and other constructions necessary or useful in connection with the development and utilization of the water or water power, shall file with the executive council a written application, which shall contain the following information:

(1) The name of the navigable, meandered or other stream in or across which a dam is maintained or it is proposed to construct a dam or other obstruction, and a description of the site for such dam, including the name or names of the riparian owners of the site.

(2) The purpose for which the dam is maintained or for which it is proposed to maintain the same, including the use to which the water is to be put.

(3) A general description of the dam, raceways, canals and other constructions, including the specifications as to the material and plan of construction and a general description of all booms, piers, and other protection works which are constructed in connection therewith, or which it is proposed to erect in connection therewith.